

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA, STATE  
OF MINNESOTA, STATE OF  
CALIFORNIA, STATE OF NORTH  
CAROLINA STATE OF TENNESSEE,  
STATE OF TEXAS, and the STATE OF  
UTAH,

*Plaintiffs,*

v.

AGRI STATS, INC.

*Defendant.*

No.: 0:23-CV-03009-JRT-JFD

**DEFENDANT AGRI STATS INC.'S**  
**ANSWER AND AFFIRMATIVE**  
**DEFENSES TO PLAINTIFFS' SECOND**  
**AMENDED COMPLAINT**

Jury Trial Demanded

Defendant Agri Stats Inc. (“Agri Stats”), by its attorneys, Hogan Lovells US LLP, as and for their Answer and Affirmative Defenses to the Second Amended Complaint (the “Second Amended Complaint”) of Plaintiffs United States of America, State of Minnesota, State of California, State of North Carolina, State of Tennessee, State of Texas, and State of Utah (collectively, “Plaintiffs”) and expressly denying each and every allegation not specifically admitted, states as follows:

[Plaintiffs’ introductory paragraph No. 1:] For years, Agri Stats, Inc. has recruited the nation’s largest meat processors to exchange detailed information about their prices, costs, and production plans. Each week, competing processors send competitively sensitive information from their internal accounting systems to Agri Stats. After auditing and standardizing these troves of data, Agri Stats creates and distributes comprehensive reports detailing competing processors’ pricing, margins, inventories, and operations.

**ANSWER:** Agri Stats admits that it sells benchmarking reports to chicken producers who subscribe to such reports and, in the past, sold benchmarking reports to pork and turkey producers who subscribed to such reports; but in mid-2019, Agri Stats ceased providing turkey or pork benchmarking services and has not provided such services in the last five years. Agri Stats admits that during the time it provided turkey and pork benchmarking services, it collected operations data from its subscribers in the pork, chicken, and turkey industries. Agri Stats denies the remaining allegations in this unnumbered paragraph.

[Plaintiffs’ introductory paragraph No. 2:] Agri Stats operates its information exchanges to promote total industry profits at the expense of competition. It does this by providing processors with unique insights about their competitors’ production, costs, and pricing—and refusing to sell the same information to processors’ customers, farmers, workers, or consumers. Agri Stats enables and encourages processors to use its asymmetrical information exchanges to weaken competition, curb production, and increase prices for purchasers. And processors follow this advice—ultimately harming consumers. The Agri Stats model was so effective in encouraging anticompetitive price increases that a Tyson executive explained, “we not only have to increase our price but we also have to out run our competitors[’] improvements.”

**ANSWER:** Agri Stats admits that its mission is to improve the profitability of each of its subscribers by showing each subscriber opportunities to be more efficient in its operations. To the extent the allegations contained in this unnumbered paragraph of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this unnumbered paragraph purport to relate to Agri Stats, Agri Stats denies the remaining allegations in this unnumbered paragraph including, without limitation, the allegation that Agri Stats operates its services to “promote total industry profits.”

[Plaintiffs’ introductory paragraph No. 3:] Agri Stats’ conduct is unlawful and must be enjoined. The United States and Plaintiff States bring this action for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, to stop Agri Stats’ anticompetitive scheme and restore competition to heartland U.S. agriculture markets.

**ANSWER:** This unnumbered paragraph does not contain any factual allegations to which a response is required. To the extent a response is required, Agri Stats denies the allegations in this unnumbered paragraph and any implication that Agri Stats engaged in any unlawful conduct and that Plaintiffs are entitled to any relief, including the relief outlined in this unnumbered paragraph.

## I. INTRODUCTION

1. Each day, U.S. meat processors produce millions of pounds of chicken, pork, and turkey—staples of many Americans’ diets. These processors largely control the supply chains that deliver meat from farms to grocery stores and restaurants, including the processing facilities that turn live poultry and livestock into traditional meat products.

**ANSWER:** Agri Stats admits that each day, producers of chicken, pork, and turkey produce substantial quantities of those respective products. Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations in Paragraph 1 of the Second Amended Complaint, and therefore denies the same.

2. Over the past two decades, Agri Stats has recruited and enabled all major U.S. chicken, pork, and turkey processors to exchange competitively sensitive information through its exclusive subscription and consulting business. Chicken, pork, and turkey processors that should be vigorous competitors have provided Agri Stats with detailed data about their current costs, output, and prices. Processors understand the competitive sensitivity of the information they provide to Agri Stats.

**ANSWER:** Agri Stats admits that it sells benchmarking reports to chicken producers who subscribe to such reports and, in the past, sold benchmarking reports to pork and turkey producers who subscribed to such reports; but in mid-2019, Agri Stats ceased providing turkey or pork benchmarking services and has not provided such services in the last five years. Agri Stats admits that during the time it provided turkey and pork benchmarking services, it collected operations data from its subscribers in the pork, chicken, and turkey industries. To the extent the allegations contained in Paragraph 2 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

3. Agri Stats then audits the data, manipulates it to facilitate comparisons, and distributes it back to processors in a variety of different reports, often less than a week after receiving the information. The result is thousands of pages of reports spanning the processors’

operations—including reports covering live production, processing, sales, and profitability of the broiler chicken,<sup>1</sup> pork, and turkey industries. The loosely anonymized reports contain competitively sensitive information about each industry and, frequently, each processor’s facilities operating in these industries. As former Agri Stats President Blair Snyder stated, “[I]t’s like Agri Stats is doing the accounting for the whole industry . . . .”

**ANSWER:** Agri Stats admits that it audits the data received from subscribers to ensure the accuracy of its reports and to protect the confidentiality of its subscribers in the reports. To the extent the allegations in Paragraph 3 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 3 of the Second Amended Complaint.

4. By design, Agri Stats focuses on raising industry-wide profitability of the meat industries it services, which can harm competition. Although it could be profitable for a processor to increase production when its prices are below those of its competitors, doing so would tend to lower industry profits; Agri Stats instead enables and encourages processors to increase prices and restrict output to boost profits industry-wide. As one Agri Stats employee stated, “A common saying in the Agri Stats circle is that ‘you cannot produce your way to the top . . . .’” Executives at some of the country’s largest meat processors testified that they could not recall any examples in which their companies used Agri Stats information to lower their sales prices to gain market share. An executive at Smithfield, a pork processor, summarized Agri Stats’ consulting advice in four words: “Just raise your price.”

**ANSWER:** Agri Stats admits that its mission is to improve the profitability of each of its subscribers, by showing each subscriber opportunities to be more efficient in its operations. To the extent the allegations contained in Paragraph 4 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in Paragraph 4 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such

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<sup>1</sup> “Broiler” chickens refer to chickens raised for meat consumption that are slaughtered before the age of 13 weeks.

documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 4 of the Second Amended Complaint, including, without limitation, the allegations that Agri Stats “focuses on raising industry-wide profitability” and that Agri Stats “enables and encourages processors to increase prices and restrict output to boost profits industry-wide.”

5. Agri Stats designs its reports so that a processor does not need to communicate directly with other processors to determine their intentions, but instead can look at the reports to forecast what competitors will do. And processors pay Agri Stats millions of dollars for these reports, which the processors in turn use to limit competition. For example, Agri Stats provides weekly sales reports that compare the processor’s prices to national averages and ranks the processor’s prices compared to the prices competitors charged for the same products. Using these reports, processors target products priced low compared to their competitors’ products for price increases—a practice some processors refer to as “chasing price” or “pricing with courage.” A processor learns of these non-public opportunities only because Agri Stats collects competitively sensitive pricing information from nearly all other processors.

**ANSWER:** Agri Stats admits that it offered a paid subscription benchmarking service that required payment and the contribution of data. To the extent the allegations contained in Paragraph 5 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same and denies all remaining allegations in Paragraph 5.

6. Other Agri Stats reports provide processors with metrics allowing them to forecast and monitor competitor output and confidently restrain production when it is profitable to do so, which can lead to higher prices.<sup>2</sup> Even though Agri Stats masks some of the information it collects, processors receive enough detailed data to allow them to forecast the plans of competitors. For example, the former CEO of Sanderson Farms assured investors during a 2009 call that Sanderson

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<sup>2</sup> Higher prices refers to prices that are higher than what a purchaser would pay absent the anticompetitive behavior at issue. This may include, for example, stabilized prices that do not decrease as much as they would in a competitive market. Likewise, supply limitations may include maintaining a consistent supply or slowing the rate of supply increases.

could maintain its current production levels because information provided by Agri Stats confirmed that his competitors were not planning on increasing production, “It makes no sense for us to ramp up. . . . [P]eople are not planning on ramping up. I see a lot of information from Agri Stats that tells me that nobody’s going to ramp up.”

**ANSWER:** To the extent the allegations in Paragraph 6 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 6 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same and denies all remaining allegations in Paragraph 6.

7. Agri Stats shares information about upstream markets as well, including competitively sensitive information related to suppliers, service providers, and workers. Agri Stats provides processors with detailed information about how their competitors compensate workers, including wage rates, farmer (or grower) pay, and other compensation metrics. While the processors willingly share this information with each other through Agri Stats, Agri Stats refuses to make the same information available to workers and farmers.

**ANSWER:** To the extent the allegations in Paragraph 7 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 7 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

8. To help enable processors to boost margins industry-wide rather than compete by lowering prices to increase sales, Agri Stats produces a profit margin report that allows competitors to evaluate their profit margin performance relative to competitors. Processors have then used this information to make executive bonus decisions. Such bonuses were not based on the firm's *total* profits, but were instead tied to the firm's profit *margin* relative to its competitors. Focusing on relative margins, rather than a processor's own profits, tends to maintain high industry prices and profits.

**ANSWER:** To the extent the allegations in Paragraph 8 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 8 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same, including, without limitation, allegations that Agri Stats "enable[s] processors to boost margins industry-wide."

9. Agri Stats refuses to make its reports available to meat purchasers and others in the protein supply chain, thereby strengthening the advantage processors gain by sharing information only with one another. As an Agri Stats employee explained to a restaurant group representative who sought access to Agri Stats data, "It would not be prudent for us to make this information available to non-users. Can you imagine if Tyson came in to negotiate with you and you started the conversation with, '[W]ell Agri Stats gave us profit information and it says . . . .' That would not be a good situation for us."

**ANSWER:** To the extent the allegations in Paragraph 9 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 9 of the Second Amended Complaint.



10. Further, Agri Stats tells these processors how to use the information to weaken competition. Agri Stats sells consulting services to the processors and has advised nearly all of the major processors in the broiler chicken, pork, and turkey industries—often with individual employees advising several competing processors simultaneously. Accordingly, Agri Stats does not advise its customers to compete more vigorously against each other or take sales from one another; rather it enables and encourages processors to raise total industry profits.

**ANSWER:** Agri Stats denies the allegations in Paragraph 10 of the Second Amended Complaint.

11. Agri Stats has organized several anticompetitive information exchanges, padding its own pockets while its subscribing processors earn millions by using information exchanged through Agri Stats to suppress competition. Meanwhile, American consumers have paid higher prices for staple food items, including chicken, pork, and turkey. The United States and Plaintiff States seek to stop these unlawful information exchanges.

**ANSWER:** Paragraph 11 of the Second Amended Complaint contains legal assertions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

## **II. AGRISTATS AND ITS CO-CONSPIRATORS**

12. Founded in 1985, Agri Stats is an Indiana for-profit corporation that has operated a subscription and consulting service in numerous meat processing industries. From 2013 to 2018, Agri Stats was a subsidiary of Eli Lilly & Company. Eli Lilly spun off the company after private plaintiffs named Agri Stats as a defendant in multiple private antitrust class action lawsuits. Today, a consortium of individuals, including four of Agri Stats' senior officers and two foreign nationals, nominally own Agri Stats through a network of holding companies. A subsidiary of TBG AG (the Thyssen-Bornemisza Group), a Swiss venture capital firm, provided nearly all of the funding to purchase Agri Stats.

**ANSWER:** Agri Stats admits that it is currently a privately held company. Agri Stats further admits that from 2013 to 2018 it was a subsidiary of Eli Lilly & Company. Agri Stats denies the remaining allegations in Paragraph 12 of the Second Amended Complaint.

13. Agri Stats owns Express Markets, Inc. ("EMI"), an Indiana for-profit corporation established in 2001. EMI operates out of the same building as, and shares staff with, Agri Stats. The two companies frequently operate interchangeably, and processors refer to Agri Stats and EMI

as “one and the same.”<sup>3</sup> EMI provides forecasting and pricing analyses for the broiler chicken, pork, turkey, egg, and beef industries that are typically more aggregated than Agri Stats-branded reports and typically made available to non-processor customers. Even so, EMI occasionally makes certain reports or information available only to processors, just as Agri Stats does with its reports.

**ANSWER:** Agri Stats admits that EMI is a wholly owned subsidiary of Agri Stats that operates out of the same building. Agri Stats admits that EMI provides market analyses and forecasts related to agriculture and animal protein production to anyone who wishes to subscribe. Agri Stats denies the remaining allegations in Paragraph 13 of the Second Amended Complaint.

14. Agri Stats’ business model involves establishing and operating information exchanges among direct competitors. In each industry where Agri Stats operates, Agri Stats agrees with its subscribing processors, and the processors agree with each other, to use Agri Stats to exchange competitively sensitive information. Agri Stats’ co-conspirators in each industry include:

- **Broiler Chicken:** Allen Harim Foods, LLC, Amick Farms, LLC (“Amick Farms”), Case Farms,<sup>4</sup> Norman W. Fries, Inc. (d/b/a Claxton Poultry Farms), Fieldale Farms Corp., Foster Poultry Farms (“Foster Farms”), George’s,<sup>5</sup> Harrison Poultry, Inc., Holmes Foods, Inc., House of Raeford Farms, Inc. (“House of Raeford”), Koch Foods, Inc. (“Koch Foods”), Mar-Jac Poultry,<sup>6</sup> Mountaire,<sup>7</sup> O.K. Foods, Inc., Peco Foods, Inc., Perdue,<sup>8</sup> Pilgrim’s Pride Corp. (“Pilgrim’s”), Sanderson Farms, LLC (“Sanderson Farms”),<sup>9</sup> Simmons Foods, Inc., Tyson,<sup>10</sup> and Wayne Farms, LLC (“Wayne Farms”);
- **Pork:** Clemens Food Group, LLC (“Clemens”), Hormel Foods Corporation (“Hormel”), Indiana Packers Corporation, JBS USA Food Company, LLC

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<sup>3</sup> A recent contract between Agri Stats and a large broiler processor stated that “Agri Stats offers EMI Price Discovery and Analytics,” treating the companies as one.

<sup>4</sup> “Case Farms” refers collectively to the affiliated entities Case Foods, Inc., Case Farms, LLC, and Case Farms Processing, Inc.

<sup>5</sup> “George’s” refers collectively to the affiliated entities George’s, Inc. and George’s Foods, LLC.

<sup>6</sup> “Mar-Jac Poultry” refers collectively to the affiliated entities Mar-Jac Poultry, Inc. and Mar-Jac Poultry LLC.

<sup>7</sup> “Mountaire” refers collectively to the affiliated entities Mountaire Farms, Inc. and Mountaire Farms of Delaware, Inc.

<sup>8</sup> “Perdue” refers collectively to the affiliated entities Perdue Farms, Inc. and Perdue Foods, LLC.

<sup>9</sup> As of 2022, Sanderson Farms and Wayne Farms are under common ownership. When referring to the combined entity, the complaint refers to “Sanderson-Wayne.” Otherwise, references to “Sanderson Farms” refers to Sanderson Farms, LLC and its predecessor entities and “Wayne Farms” refers to Wayne Farms, LLC and its predecessor entities.

<sup>10</sup> “Tyson” refers to the affiliated entities Tyson Foods, Inc., and Keystone Foods, LLC.

(“JBS”), Seaboard Foods, LLC (“Seaboard”), Smithfield Foods, Inc. (“Smithfield”), Triumph Foods, LLC (“Triumph”),<sup>11</sup> and Tyson;

- **Turkey:** Butterball, LLC (“Butterball”), Cargill,<sup>12</sup> Cooper Farms, Inc. (“Cooper Farms”), Dakota Provisions, LLC, Farbest Foods, Inc. (“Farbest”), Foster Farms, House of Raeford, Hormel, Jennie-O Turkey Store, Inc. (“Jennie-O”), Kraft Heinz Foods, Michigan Turkey Producers, LLC, Perdue, Prestage,<sup>13</sup> Tyson, and West Liberty Foods, LLC.

**ANSWER:** To the extent the allegations in Paragraph 14 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 14 of the Second Amended Complaint.

15. Agri Stats paused its turkey and pork processing reports in late 2019 in response to private antitrust litigation, but its executives have stated that they want to resume reporting in these industries once that litigation concludes.

**ANSWER:** Agri Stats admits that, since mid-2019, it has not provided turkey or pork benchmarking services. Agri Stats denies the remaining allegations in Paragraph 15 of the Second Amended Complaint.

16. Agri Stats operates an information-sharing scheme that allows processors to exchange competitively sensitive information about their operations and sales that is comprehensive, granular, current, and available exclusively to processors.<sup>14</sup>

**ANSWER:** Agri Stats denies the allegations in Paragraph 16 of the Second Amended Complaint.

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<sup>11</sup> Seaboard and Triumph operate as a joint venture for certain purposes. If referring to the joint venture entity, the complaint refers to “Seaboard/Triumph.”

<sup>12</sup> “Cargill” refers both to Cargill Meat Solutions Corporation and its parent company Cargill, Inc.

<sup>13</sup> “Prestage” refers to Prestage Farms, Inc., Prestage Foods, Inc., and Prestage Farms of South Carolina, LLC.

<sup>14</sup> Agri Stats provides significantly limited versions of its reports to “allied participants”—a “very select” group that Agri Stats believes “will use the data for the betterment of the industry and the profitability of [its] customers.” Allied participants generally include pharmaceutical companies that use the data to track the efficacy of drugs used in animals, poultry genetics companies, and trade associations.

### III. AGRI STATS PROFITS BY MANAGING THE EXCHANGE OF SENSITIVE INFORMATION AMONG COMPETITORS

17. Agri Stats collects competitively sensitive information that processors ordinarily would not disclose to competitors. Agri Stats does not gather information through voluntary surveys or periodic polling. Instead, it secures from processors a “direct download of general ledgers and internal reports.” When a processor becomes an Agri Stats subscriber, or when an existing subscriber adds a new facility, Agri Stats sends a “setup specialist” onsite to map the processor’s data to Agri Stats’ systems. The implementation process takes two to three weeks, but once completed, processors can send vast quantities of data with minimal effort. This allows Agri Stats to quickly disseminate information on nearly every quantifiable metric, sometimes in a matter of days.

**ANSWER:** Agri Stats admits that it collects data from its broilers report customers and that it standardizes the data to create reports for its subscribers on key operating metrics. Agri Stats admits that, before mid-2019, it collected data from its pork and turkey report customers and that it standardized the data to create reports for its subscribers on key operating metrics and avers that it has not provided benchmarking services for pork or turkey customers since mid-2019. To the extent the remaining allegations in Paragraph 17 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the remaining allegations contained in Paragraph 17 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the remaining allegations in Paragraph 17 purport to relate to Agri Stats, Agri Stats denies the same.

18. Processors share information with Agri Stats on all aspects of their businesses, from the hatching of chicks or birth of livestock, through the raising and slaughter of animals for meat, to customer delivery. In the broiler chicken industry, for example, Agri Stats receives data on live production, processing, and sales, including:

**Live Production**

- Quantity of Breeder Chicks Placed
- Housing Costs
- Feed Costs
- Bird Weights
- Hatching Metrics
- Mortality Rates

**Processing**

- Wage Rates
- Overtime
- Line Speed
- Insurance Costs
- Product Yield
- Maintenance Costs

**Sales**

- Each Sales Transaction, including:
  - Purchasing Customer
  - Price Charged
  - Products & Amounts Sold
- Product Mix
- Freight Costs

**ANSWER:** To the extent the allegations in Paragraph 18 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

19. Agri Stats audits the data it collects to ensure its reliability, thereby preventing processors from hiding or withholding information from their competitors. By validating the accuracy and completeness of the information, Agri Stats reduces common challenges to coordination—distrust among competitors and “cheating” on agreements. Agri Stats boasted in one presentation that it provides more trustworthy information than what a processor might receive directly from a competitor (Fig. 1).

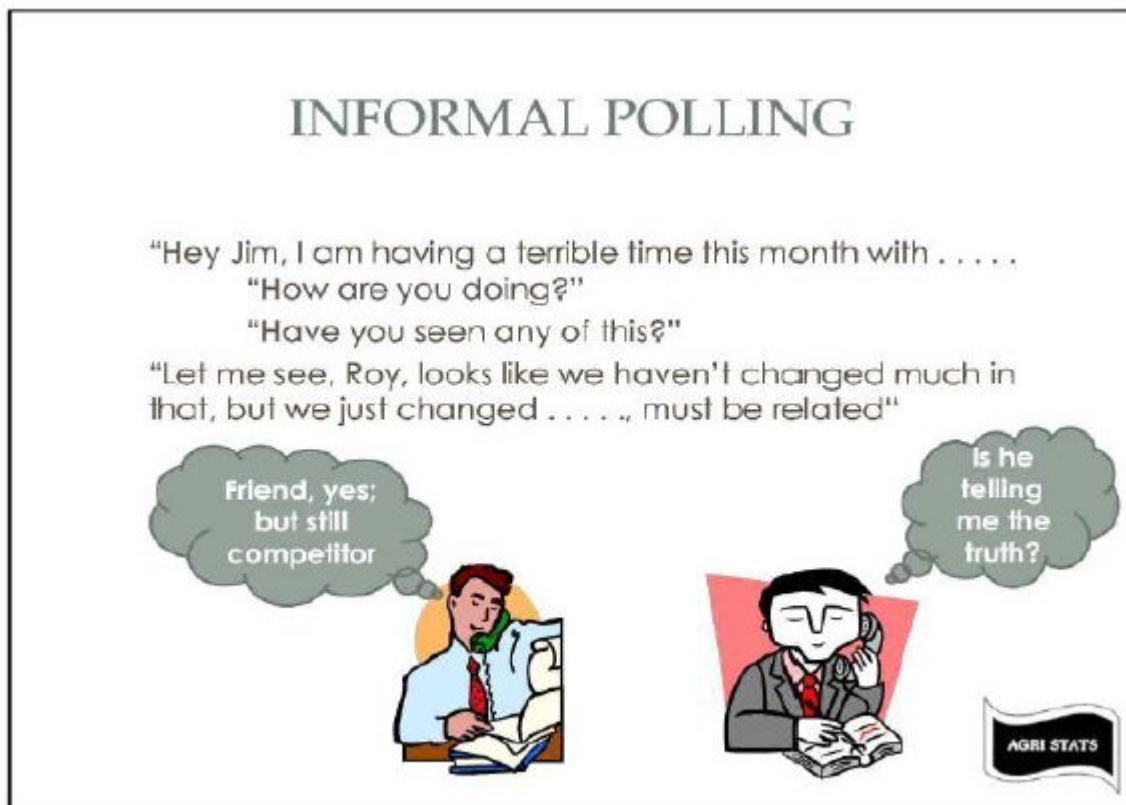


Figure 1

**ANSWER:** Agri Stats admits that it audits the data received from subscribers to ensure the accuracy of its reports and to protect the confidentiality of its subscribers in the reports. To the extent the allegations in Paragraph 19 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 19.

20. Agri Stats converts the data shared by processors to common metrics so they can make apples-to-apples comparisons across their operations and sales. If processors exchanged internal ledgers directly, they would need to account for each other's differing accounting methods and processes. Agri Stats eliminates that barrier to coordination. For example, Agri Stats sales reports group products based on characteristics such as form, weight, grade, preservation method, and packaging, which allows processors to assess how their prices compare to weighted averaged

prices of the same products sold by competitors.<sup>15</sup> Agri Stats processing reports similarly group workers into job categories and provide wage and benefits information in a unified form so that processors can compare employee wages and benefits in common metrics.

**ANSWER:** To the extent the allegations in Paragraph 20 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 20 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

21. Agri Stats compiles the data into “books” that it distributes back to the processors. Each book contains comprehensive “reports” detailing each competitor’s performance on various business functions. The books that Agri Stats produces are hundreds of pages long and replete with company- and facility-level information. Agri Stats’ former president described a typical book of reports as “a phonebook of information. . . . It’s an inch and a half, two inches thick.”

**ANSWER:** To the extent the allegations in Paragraph 21 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 21.

22. The data that Agri Stats distributes is current. For example, broiler chicken weekly sales reports, which include pricing data, are typically published on Thursdays and include the previous week’s data. For pork, Agri Stats provided an online data system called “Dataminer,” which included data from the previous week. Processors could query Dataminer to quickly and efficiently determine how their prices varied from the national average.

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<sup>15</sup> Agri Stats sales reports will report these weighted average prices with as few as two processors (i.e., the recipient and one other processor).



**ANSWER:** To the extent the allegations in Paragraph 22 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 22.

23. Agri Stats also publishes monthly reports that include information that is between thirty and sixty days old. Such current data gives processors a near-real-time understanding of their competitors' pricing, output, and costs, which enables the processors to reduce competition.

**ANSWER:** To the extent the allegations in Paragraph 23 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 23 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

24. To ensure processors provide comprehensive information, Agri Stats regularly enforces a "give-to-get" policy that requires each processor to share complete data for each of its facilities. Agri Stats uses its position as a third-party intermediary to ensure that each processor contributes complete information to further the overall cooperative objective: increased profits for all processors.

**ANSWER:** Agri Stats admits that it offered a paid subscription to its benchmarking report service that required payment and the contribution of data. Agri Stats denies the remaining allegations in Paragraph 24 of the Second Amended Complaint.

25. Agri Stats provides processors with the names of the companies and facilities participating in its various reports.<sup>16</sup> Processors actively monitor these lists and contact Agri Stats

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<sup>16</sup> Competitor data is superficially anonymized in Agri Stats reports. As discussed below, however, processors can and do deanonymize the data, linking particular data to individual processors and processor facilities.



if certain competitors do not appear. For example, after Seaboard temporarily left the pork reports in 2017, Smithfield's Vice President of Finance wrote to an Agri Stats employee, "[W]here are you on Seaboard[]'s re entry into your program? January results?" The Agri Stats employee responded, "Still in discussions but they will not be present in the January report." She later assured the Smithfield Vice President of her attempts to include its competitor in future reports: "Believe me I'm trying like hell[.]"

**ANSWER:** To the extent the allegations in Paragraph 25 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 25 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

26. Some processors explicitly made their participation contingent on their competitors' participation. For example, in an effort to entice Tyson into providing data for all of its pork plants, Agri Stats made a "commitment to get JBS and Hormel completely onboard as well." Agri Stats kept Tyson apprised of efforts to recruit Tyson's competitors and JBS and Hormel joined the reports, as Agri Stats committed, within the year.

**ANSWER:** To the extent the allegations in Paragraph 26 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 26 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

27. The "give-to-get" policy also ensures that the processors' customers—including grocery stores and restaurants that buy broiler chicken, pork, and turkey products—do not obtain

the information shared among the processors. When meat purchasers and workers have sought Agri Stats reports, Agri Stats has refused. Asked why Agri Stats adopted this policy, Agri Stats' President explained, "[O]ur customers are the producers. We don't get in the way of the relationship between the producers and the buyers."

**ANSWER:** To the extent the allegations in Paragraph 27 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

28. Through its reports and consulting services, Agri Stats provides processors with thousands of data points that allow them to understand their competitors' businesses. The information that Agri Stats collects and distributes is available nowhere else, and processors have regularly used this information to inflate prices and restrict output.

**ANSWER:** Agri Stats denies the allegations in Paragraph 28 of the Second Amended Complaint.

#### **IV. AGRI STATS SHARES COMPETITIVELY SENSITIVE INFORMATION THROUGH WRITTEN REPORTS AND DIRECT COUNSELING**

##### **A. Agri Stats Reports**

29. The most apparent way Agri Stats shares information among competitors is through its written reports, which are organized into "books." Agri Stats produces a number of books consisting of standard and custom reports covering the various stages of production, including live production, processing, sales, and operations profits.

- The "**sales**" book includes reports comparing a processor's pricing for specific packaged cuts of meat with aggregated sales information compiled from competitors' sales.
- The "**live production**" book includes reports that provide details on each facility's costs and expenses for raising an animal for slaughter.
- The "**processing**" book includes reports that list each facility's costs and expenses for slaughtering an animal and dividing it into parts for sale.
- The "**operations profits**" book includes reports that use information from the live production, processing, and sales books to provide information on each participating facility's profit margins.

- The “**bottomline report**” is a short report that ranks each participating processor based on company-level profit margins on a per animal and per pound basis.

**ANSWER:** To the extent the allegations in Paragraph 29 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

30. In each industry, Agri Stats issues targeted reports that may come included in one of the “books” or as a standalone report. For example, as part of the turkey sales books, Agri Stats included more targeted “Retail and Deli” sales reports, providing sales data for deli turkey products. In pork, Agri Stats produced an Export Sales Report tracking pork sales data broken down by product type to foreign countries. Agri Stats also circulated to broiler chicken processors a “Freezer Inventory Report” providing information on the industry current total inventories, which correlates with price.

**ANSWER:** To the extent the allegations in Paragraph 30 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

31. In addition, processors frequently request other customized reports, such as processing reports that compare only processing facilities slaughtering broiler chickens of a certain size or sales reports that focus on a particular product segment, like consumer tray pack sales.

**ANSWER:** Agri Stats denies the allegations in Paragraph 31 of the Second Amended Complaint.

32. Each report presents information in different ways. Some contain information about each competitor on a facility-by-facility basis, while other reports contain key metrics and data about highly specific product types. Two particular types of reports, sales and live production, are discussed in detail below.

**ANSWER:** To the extent the allegations in Paragraph 32 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

### **1. Agri Stats Sales Reports**

33. Several different Agri Stats books provide processors with competitively sensitive price information. Certain Agri Stats sales reports provide information on competitors' invoice prices on a company-basis for particular categories of meat (e.g., turkey deli meat).

**ANSWER:** To the extent the allegations in Paragraph 33 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

34. Other reports provide information for specific cuts of meat (identified at the near-SKU level).<sup>17</sup> Agri Stats provides the weighted average and top quartile prices and tells processors where their price ranks among competitors' prices for the same items. This pricing information is recent (from the prior week for weekly reports and 30-60 days removed for monthly reports). Agri Stats defines each item by its cut, trim, weight, preservation method, and packaging, allowing processors to see where their prices rank against competitors' prices for like items.

**ANSWER:** To the extent the allegations in Paragraph 34 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

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<sup>17</sup> "SKU" refers to "stock keeping unit" and is used to identify and track distinct types of items sold for inventory purposes.

35. For example, poultry processors sell millions of pounds of chicken breasts each week to wholesalers, grocery stores, and restaurants. Agri Stats divides this category into smaller subcategories based on whether the cuts are left whole, sliced, diced, cut into strips, or trimmed of fat. Agri Stats then further separates these cuts by preservation method (e.g., ice, carbon dioxide, vacuum packed, frozen, poly bagged) and packaging (e.g., boxed, “combo bin,” bagged, consumer/retail ready, regular tray pack, jumbo tray pack). By reporting on these more detailed categories, Agri Stats allows processors to compare prices on similar items at the near-SKU level sold to like customers.

**ANSWER:** To the extent the allegations in Paragraph 35 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 35 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

36. Figures 2 and 3 feature a single line from a weekly Agri Stats broiler sales report providing information on a category of marinated chicken drumsticks, chilled, and packaged in jumbo tray packs (Fig. 2 at (b)).<sup>18</sup> For this particular item, Agri Stats tells the processor how much of the product it sold (Fig. 2 at (c)) and how much the industry sold (Fig. 2 at (c.2)), allowing the processor to determine that its sales made up approximately 19% of the national sales for that week (Fig. 2 (c)÷(c.2)).

(a)		(b)	(c)	(c.1)	(c.2)	(c.3)
LINE	PRODUCT CODE	AGRI STATS/COMPANY PRODUCT DESCRIPTION	COMPANY POUNDS	COMPANY MIX %	NATIONAL POUNDS	NATIONAL % MIX
1	506VAD 00000A554	DRUMSTICK, V ADD, LW, P A/IR, CHILL, JUM	249,571	6.60	1,293,884	0.26

Figure 2

**ANSWER:** To the extent the allegations in Paragraph 36 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri

<sup>18</sup> Figures 2 and 3 appear as a single line in the report, but are separated here to make them more legible.

Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

37. For each item, the sales report also tells each processor the average price it charged (Fig. 3 at (d)) as well as the average industry price (Fig. 3 at (d.1)) and top quartile price (Fig. 3 at (d.2)) charged for like items. It then ranks the processor's price (Fig. 3 at (e)), with the top rank going to the processor with the highest price. In this example, Agri Stats tells the processor that its price "ranked" seventh out of the eight sellers of this product during the week (Fig. 3 at (e)), meaning its price was the seventh *lowest* of the eight sellers.

(d)	(d.1)	(d.2)	(e)	(e.1)	(e.2)	(f)	(f.1)
COMPANY	NAT'L	NAT'L	VARIANCE TO NAT'L			ECONOMIC IMPACT DOLLARS	
NET PRICE	NET PRICE	TOP 25%	NAT'L RANK	NAT'L VAR	TOP 25 VAR	VAR NAT'L	VAR TOP 25
71.80	75.51	79.54	7-8	-3.71	-7.74	-9,255	-19,319

Figure 3

**ANSWER:** To the extent the allegations in Paragraph 37 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

38. A processor that learns it has a low rank on price for an item—such as seventh out of eight competitors—can raise prices on that item with reduced uncertainty about losing business to a competitor based on price.

**ANSWER:** Agri Stats denies the allegations in Paragraph 38 of the Second Amended Complaint.

39. The average and top quartile prices provide the processor with additional details to guide its pricing. The Agri Stats sales report tells the processor how far below the industry average price and below the top quartile price (Fig. 3 at (e), (e.1.) & (e.2)) its price fell, and it quantifies the economic impact of leaving the price at below average and below top quartile prices as lost revenue (Fig. 3 at (f) and (f.1)). This information is particularly valuable where only a small number of processors—sometimes as few as two—sell comparable items.

**ANSWER:** Agri Stats denies the allegations in Paragraph 39 of the Second Amended Complaint.

40. As discussed later, processors have routinely relied on the weighted average price and weighted top quartile price information to identify particular items for price increases. Processors in each industry, often with Agri Stats' assistance, identified those items priced below the Agri Stats average as "opportunities" to impose price increases.

**ANSWER:** To the extent the allegations in Paragraph 40 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 40 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

## **2. Agri Stats Live Production Reports**

41. Agri Stats live production books comprise reports that provide facility-by-facility information on the production levels of each participating processor. Processors receive comprehensive reports that include all competitors, as well as more targeted reports that provide information about a select set of competing facilities.

**ANSWER:** To the extent the allegations in Paragraph 41 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

42. Consider the following excerpt from the broiler chicken live production book for February 2013, which provides production information about facilities that process birds weighing

more than 7.5 pounds.<sup>19</sup> Agri Stats provides each processor receiving this report with a list of each facility—by company and location—processing that size bird (Figure 4):

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<sup>19</sup> Processors use birds of different sizes to produce different products. For example, a processor producing chicken breasts for sale to quick service restaurants may use smaller birds to make the ideal sized product for a chicken breast sandwich, while a company producing chicken tenders from breast meat might opt for using a larger size cut of breast meat.



### BREEDER SECTION PARTICIPANTS

1. AMICK BROILER CO. - BATESBURG, SC
2. AMICK BROILER CO. - HURLOCK, MD
3. CASE FARMS - GOLDSBORO, NC
4. CASE FARMS - MORGANTON, NC
5. CASE FARMS - WINESBURG, OH
6. COLUMBIA FARMS - COLUMBIA, SC
7. COLUMBIA FARMS - LAVONIA, GA
8. EQUITY GROUP GA DIVISION - CAMILLA, GA
9. EQUITY GROUP KY DIVISION - FRANKLIN, KY
10. HOUSE OF RAEFORD - ARCADIA, LA
11. HOUSE OF RAEFORD - ROSE HILL, NC
12. KOCH POULTRY COMPANY - DALTON, GA
13. KOCH POULTRY COMPANY - MONTGOMERY, AL
14. KOCH POULTRY COMPANY - MORTON, MS
15. MOUTAIRE FARMS, INC. - NORTH CAROLINA #1
16. PILGRIM'S - BROADWAY, VA
17. PILGRIM'S - DOUGLAS, GA
18. PILGRIM'S - GUNTERVILLE, AL
19. PILGRIM'S - MARSHVILLE, NC
20. PILGRIM'S - NACOGDOCHES, TX
21. PILGRIM'S - RUSSELLVILLE, AL
22. PILGRIM'S - SANFORD, NC
23. PILGRIM'S - SUMTER, SC
24. SANDERSON FARMS - COLLINS, MS
25. SANDERSON FARMS - HAZLEHURST, MS
26. SANDERSON FARMS - LAUREL, MS
27. SANDERSON FARMS - MCCOMB, MS
28. SANDERSON FARMS - WACO, TX
29. TYSON FOODS - GRANNIS, AR
30. WAYNE POULTRY - ALBERTVILLE, AL
31. WAYNE POULTRY - DANVILLE, AR
32. WAYNE POULTRY - DECATUR, AL
33. WAYNE POULTRY - DOBSON, NC
34. WAYNE POULTRY - LAUREL, MS
35. WAYNE POULTRY - PENDERGRASS, GA
36. WAYNE POULTRY - UNION SPRINGS, AL

Figure 4

**ANSWER:** To the extent the allegations in Paragraph 42 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri

Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

43. The live production book then provides detailed information about the growing of poultry or livestock for each contributor, such as the breeder chick placements (also known as “pullets”) associated with each broiler chicken processing facility.<sup>20</sup> Figure 5 is an excerpt from a report titled “Monthly Breeder Chick Placement by Plant.” In this report, each processing facility is represented by a line number (“LIN”) and the female (a.1.) and male (b.1.) breeder chick placements are stated for each facility. The reports compare breeder chick placements at each facility to the previous year’s placements (Fig. 5 at (a.2) and (b.2)).

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<sup>20</sup> Breeder chicks are called “pullets” when referring to broiler hens and “breeder poults” when referring to turkey hens.

LIN	%	FLAGS	SP	PLT. NUM.	(a) FEMALE CHICKS-AVG WEEKLY PLACED			MALE/ 100 FEM	(b) MALE CHICKS-AVG WEEKLY PLACED		
					(a.1) % LAST YR MO	(a.1) THIS MONTH	(a.2) MONTH YR AGO		(b.1) % LAST YR MO	(b.1) THIS MONTH	(b.2) MONTH YR AGO
1	100				-	29,952	-	9.26	-	2,774	-
2	97				-	23,813	-	12.74	-	3,034	-
3	94				-	21,740	-	11.94	-	2,596	-
4	91				136.44	17,562	12,871	14.06	133.33	2,469	1,852
5	88				80.51	17,360	21,563	12.67	89.08	2,200	2,470
6	85				132.70	17,342	13,068	14.33	215.30	2,486	1,155
7	82				44.16	16,034	36,312	9.12	34.79	1,463	4,204
8	79				-	14,953	-	10.76	-	1,610	-
9	76			GRNV	165.41	14,468	8,747	11.68	172.66	1,690	979
10	73				201.26	14,338	7,124	12.25	193.10	1,757	910
11	70				85.85	12,750	14,851	16.16	104.17	2,060	1,978
12	67				166.62	11,727	7,038	12.97	165.72	1,521	918
13	64				98.19	11,098	11,302	13.64	98.66	1,514	1,535
14	61				-	10,506	-	21.57	-	2,266	-
15	58				68.33	10,250	15,000	12.20	61.73	1,250	2,025
16	55				-	9,690	-	12.78	-	1,239	-
17	52				91.30	9,668	10,589	15.15	90.75	1,465	1,614
18	48				-	9,286	-	12.98	-	1,206	-
19	45				128.21	9,180	7,160	11.11	120.28	1,020	848
20	42				91.82	7,894	8,597	14.47	91.30	1,142	1,251
21	39				91.82	7,894	8,597	14.18	91.30	1,120	1,226
22	36				81.89	5,813	7,099	18.06	108.45	1,050	968
23	33			COLA	-	5,800	-	14.22	-	825	-
24	30			ARCADA	100.00	5,675	5,675	11.23	100.00	638	638
25	27				82.00	5,625	6,860	12.00	84.38	675	800
26	24				65.43	4,995	7,634	13.14	74.62	656	879
27	21				126.36	4,743	3,754	12.22	126.47	580	458
28	18				-	4,717	-	12.09	-	570	-
29	15				71.58	4,716	6,589	13.65	72.66	644	886
30	12				-	4,488	-	14.09	-	632	-
31	9				88.28	3,278	3,713	14.73	97.64	483	494
32	6				-	0	5,508	0.00	-	0	1,367
33	3				-	0	8,597	0.00	-	0	1,251
34		33		Total	145.80	347,353	238,248	12.86	145.37	44,631	30,703

Figure 5

**ANSWER:** To the extent the allegations in Paragraph 43 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

44. In addition to facility-level information, the report provides industry-wide figures, including the total number of breeder chick placements and how those numbers compare with the previous year. Specifically, the report discloses that placements have increased by 45.80% for female chicks and by 45.37% for male chicks (Fig. 5, line 34 at (a) and (b)). Unlike public data

sources that rely on voluntary reporting, the breeder chick placement information here is comprehensive (all subscribers contribute) and is available for different-sized birds so processors can track whether processors are expanding production in certain sales channels.

**ANSWER:** To the extent the allegations in Paragraph 44 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

45. As Agri Stats has stated in its live production customer manual (Fig. 6), the purpose of providing breeder chick information is to “help forecast Broilers & pounds produced for future months.”

## **BREEDER SECTION-CUSTOMER MANUAL**

### **1.1 – BREEDER CHICK PLACEMENTS BY FLOCK**

#### **PURPOSE:**

1. To identify the number, date, and breed of chicks being placed that will become pullets on a flock by flock basis.
2. To help forecast Broilers & pounds produced for future months.

Figure 6

**ANSWER:** To the extent the allegations in Paragraph 45 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

46. Breeder chicks begin laying eggs at about six months after placement. When a broiler chicken processor is planning to expand, typically it needs to begin increasing the size of the hatchery supply flock by increasing breeder chick placements approximately six months in

advance. Monitoring breeder chick placements allows processors to forecast the future production plans of competitors.

**ANSWER:** Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in Paragraph 46 of the Second Amended Complaint, and therefore denies the same.

47. Joe Sanderson, the former CEO of Sanderson Farms, specifically referred to tracking “pullet placements” in Agri Stats reports when he assured investors that Sanderson had no plans to increase production because his competitors were not doing so. He also explained that he could track production in terms of bird weight across sales channels (big bird, small bird, track pack) using Agri Stats:

I think the increase in Agri Stats that showed up in 2009 in weight, was primarily in the tray pac[k] region. There was a nominal increase in the big bird deboning but it was very slight. The tray pac[k] region increased more than anyone else, but it has not changed in about six months now and I think that has topped out. Small bird hasn't increased any. I don't really anticipate very much movement in weights any more in 2010. I don't see any more head until we see some improvement in pricing, so I think head count is going to run close to what we have.<sup>21</sup>

**ANSWER:** To the extent the allegations in Paragraph 47 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 47 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

## **B. Agri Stats Sales Consulting**

48. In addition to providing processors with written reports, Agri Stats meets with individual subscribers multiple times a year to discuss how to use the information that Agri Stats

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<sup>21</sup> Yet another report, the Operations Profits Report, allows processors to track facility-by-facility and “dock” prices of their competitors. The dock price refers to the composite amount a processor receives for a processed chicken, turkey, or hog. This number is calculated by adding up the amount received for each part of the animal that is sold.

collects. Frequently, Agri Stats reviews price “opportunities” with processors like those discussed above and identifies items and customers to target for price increases. Agri Stats account managers prepare detailed presentations for their subscribers highlighting the additional revenue they could make by increasing prices.

**ANSWER:** Agri Stats admits that its mission is to improve the profitability of each of its subscribers, by showing each subscriber opportunities to be more efficient in its operations. Agri Stats admits that it offered to meet with its subscribers to review that subscriber’s own reports, but specifically denies that such reviews included the reports of any other subscriber. Agri Stats denies the remaining allegations in Paragraph 48 of the Second Amended Complaint.

49. Agri Stats has touted its ability to identify opportunities to raise prices as a selling point. When one processor contemplated unsubscribing from Agri Stats’ bacon report, for example, Agri Stats employees encouraged it to continue subscribing by pointing to \$100,000 in additional revenue the processor could make by raising prices on particular bacon products.

**ANSWER:** Agri Stats admits that its mission is to improve the profitability of each of its subscribers, by showing each subscriber opportunities to be more efficient in its operations. To the extent the allegations in Paragraph 49 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 49 of the Second Amended Complaint.

50. The consulting sessions provide an opportunity to directly advise participants on raising prices to boost industry profits. The in-person consulting sessions also provide processors with an opportunity to discuss with Agri Stats account managers information that might not be included in Agri Stats reports, but nevertheless might be gleaned from the detailed information Agri Stats receives about the operations and sales of nearly every major participant in the industries in which it operates.

**ANSWER:** Agri Stats admits that its mission is to improve the profitability of each of its subscribers, by showing each subscriber opportunities to be more efficient in its operations. Agri Stats admits that it offered to meet with its subscribers to review that subscriber's own reports, but specifically denies that such reviews included the reports of any other subscriber. Agri Stats denies that it offered "consulting sessions" to its subscribers because it did not advise on any course of action that any producer should make. Agri Stats denies the remaining allegations in Paragraph 50 of the Second Amended Complaint.

**V. PROCESSORS USE THE AGRI STATS INFORMATION-SHARING SCHEME TO INCREASES PRICES AND RESTRICT THE SUPPLY OF MEAT**

51. With Agri Stats' encouragement and facilitation, Agri Stats' processor-subscribers use the information collected and distributed by Agri Stats to increase and stabilize prices and reduce the supply of meat.

**ANSWER:** Agri Stats denies the allegations in Paragraph 51 of the Second Amended Complaint.

**A. Processors Use Information Shared through Agri Stats Reports and Consulting to Raise Prices**

52. By enabling and encouraging processors to focus on increasing prices on items priced below their competitors, Agri Stats helps processors boost sales margins, thereby increasing profits without lowering prices to take sales from competitors. The data allows processors to profitably raise prices on relatively low-priced products with greater confidence that they will not lose sales to lower priced rivals. The examples below illustrate how processors used Agri Stats reports to stabilize and raise prices.

**ANSWER:** Agri Stats denies the allegations in Paragraph 52 of the Second Amended Complaint.

**1. Tyson Used Agri Stats Sales Data to Increase Chicken Prices**

53. In January 2010, Tyson embarked on a plan to use competitor data exchanged through Agri Stats to increase prices in its fresh chicken business, a project that would potentially impact more than 3,000 retail outlets. Tyson deployed Agri Stats' weekly sales report—data that



was often less than a week old—to its sales force for use in negotiating prices. Tyson management told employees to aggressively push price increases and “[h]ave price courage.”

**ANSWER:** To the extent the allegations in Paragraph 53 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 53 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

54. Tyson focused on raising prices on fresh tray pack items (chicken packaged to sell predominately at grocery stores) to meet the national average as reported by Agri Stats. Tyson tracked the “variance” between Tyson’s average price and the national average price, and circulated a chart showing the company’s progress at reducing the variance. As shown below (Fig. 7), the bottom flat line represents the variance of -3.8 cents per pound (when Tyson began its pricing initiative) while the top flat line represents targeted “zero variance.” Each week, Tyson used Agri Stats data to track the variance between its average price for this category of products and the industry average. The chart shows how Tyson, by increasing prices, gradually narrowed the variance and brought its prices in line with the industry average price.



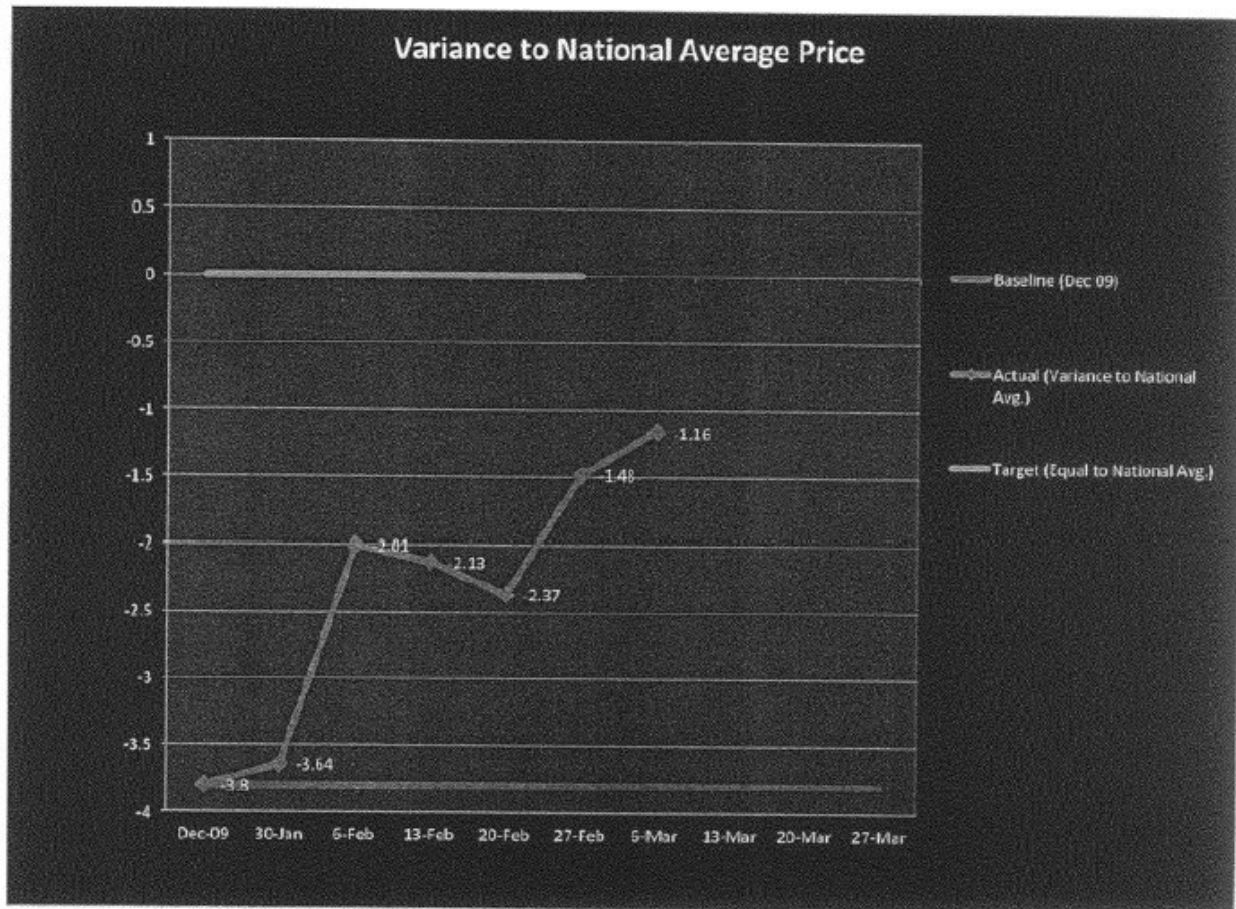


Figure 7

**ANSWER:** To the extent the allegations in Paragraph 54 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 54 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

55. Tyson's price increases were not dictated by independent market forces that affected costs or supply. Rather, the Agri Stats reports, by providing averages and the top 25<sup>th</sup>

percentile, informed Tyson that it could increase prices on items that its competitors already sold at higher prices. That is what Tyson did.

**ANSWER:** Agri Stats denies the allegations in Paragraph 55 of the Second Amended Complaint.

56. At the same time, Tyson's competitors were also raising prices, prompting one Tyson executive to explain the difficulty in closing the variance: "Overall we improved in sales price in several categories vs the previous week but it is obvious that our competition also made improvement. As we have discussed[,] we not only have to increase our price but we also have to out run our competitors['] improvements."

**ANSWER:** To the extent the allegations in Paragraph 56 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 56 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

57. Tyson and its broiler chicken competitors could focus on raising prices because they understood that processors did not use Agri Stats data to lower prices. A Tyson sales executive stated that he instructed his team to "stay ahead" of other broiler processors' price increases and that he never considered the possibility that competitors would respond by reducing their prices to take market share away from Tyson. From January 2010 to May 2012, Tyson raised the average price of tray pack items by over 20% and continued raising prices thereafter.

**ANSWER:** To the extent the allegations in Paragraph 57 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 57 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief

concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

**2. Sanderson Farms Used Agri Stats Sales Data to Increase Chicken Prices**

58. Sanderson Farms used Agri Stats reports in a similar manner. For example, in December 2012, an executive circulated an email stating that the company had secured more than \$18 million in price increases over the previous six months while noting, “We are not done.” He directed his sales team to continue renegotiating with open-ended contract customers to increase prices, explaining, “Start with wing help and then address any other parts that may be deficient. . . . All customers under contract will also be asked for help on wings and any other items deficient in Agri Stats.”

**ANSWER:** To the extent the allegations in Paragraph 58 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 58 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

59. The Sanderson executive attached a spreadsheet (Fig. 8) identifying each customer, the contract date, the difference between current pricing and Agri Stats pricing, the status of any negotiations, and the amount of additional revenue secured or targeted for that customer. The spreadsheet ranks customers by the variance between Sanderson’s prices and the Agri Stats price, and demonstrates how the company targeted for price increases those customers who had been receiving prices below Agri Stats prices. The customers include some of most well-known supermarkets in the United States.

CONTRACT NEGOTIATIONS						
October Customer Rankings						
Customer	Contract Date	Oct. AgriStats	Status	Achieved	Target	
	November-14	\$ (0.0957)	\$0.06 increase on program on Nov. 2	\$1,796,756.48		
	Open ended	\$ (0.0763)	\$0.02 increase 11/10. Moved to Kin on 12/3. \$0.0325 adv. (\$0.03 bracket on 11/28)	\$855,201.90		
	December 2012	\$ (0.0714)	Contract negotiations in Dec. (ask for \$0.10 submitted 10/31)		\$ 1,697,032.00	
	October-13	\$ (0.0708)	\$0.0428 increase on program in Oct. and \$0.04 bracket on 10/31	\$989,800.00		
	December-14	\$ (0.0628)	Less than a year into contract			
	July 2014	\$ (0.0611)	\$0.035 increase on program in Sept	\$3,673,987.94		
	January 2014	\$ (0.0545)	Less than a year into contract			
	December 2013	\$ (0.0457)	\$0.049 increase on entire program in Aug. Asking for flat price help. \$0.0288	\$6,563,866.04	\$ 3,857,945.75	
	June-13	\$ (0.0343)	Proposal sent 11/29. \$0.0625		\$ 1,000,000.00	
	Open ended	\$ (0.0342)	Need wings, boneless, tenders. Meeting Dec 12		\$ 136,453.92	
	June-13	\$ (0.0197)				
	Open ended	\$ (0.0140)	Got \$0.05 on drums/thighs and \$0.1857 on wings on Dec 5. \$0.03 bracket 11/21	\$ 814,828.80		
	July 2014	\$ (0.0034)	\$0.14 increase on wings in Aug and a \$0.03 bracket on 10/31	\$ 32,032.56		
	December 2012	\$ 0.0039	Contract negotiations in Dec. Asking for \$0.087		\$ 1,311,796.50	
	Open ended	\$ 0.0063	\$0.02 on dark meat and \$0.11 on wings. 11/29	\$ 223,459.08		
	September-14	\$ 0.0071	Got \$1.5 mil in Sept	\$ 1,475,967.60		
	Open ended	\$ 0.0105	Need wings, boneless, tenders. Meeting Dec 12		\$ 199,353.84	
	Open ended	\$ 0.0139	\$0.0417 increase on program in Nov. on drum, thigh, wing	\$ 411,000.00		
	Open ended	\$ 0.0152	Got wing help on 12/3. Got \$0.03 on bracket 10/31	\$ 538,525.95		
	Open ended	\$ 0.0164	Need wings, drum, thigh, hearts (sent new program 11/19)		???	
	Open ended	\$ 0.0271	Got increase on drums, thighs, splits and wings in Dec.	\$ 14,970.12		
	March 2013	\$ 0.0280				
	Open ended	\$ 0.0366				
	Open ended	\$ 0.0397	\$0.26 increase on wings in Aug	\$ 774,310.94		
	Open ended	\$ 0.0456				
	Open ended	\$ 0.0502	Got a \$0.05 on drums and brts. \$0.02 on LQ in Dec	\$ 635.60		
	Open ended	\$ 0.0504				
	Open ended	\$ 0.0542				
	Open ended	\$ 0.0643				
	December 2012	\$ 0.0690	Contract negotiations in Dec. Asking for \$0.087		\$ 393,538.95	
	Open ended	\$ 0.0738				
	Open ended	\$ 0.0857	\$0.12 increase on wings in June	\$ 199,765.44		
	Open ended	\$ 0.0889				
	Open ended	\$ 0.0958	Got help on drums, thighs and wings in Dec.	\$ 473.76		
	Open ended	\$ 0.0997				
				\$10,365,602.21	\$8,536,120.96	

Figure 8<sup>22</sup>

**ANSWER:** To the extent the allegations in Paragraph 59 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 59 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

<sup>22</sup> The United States has obscured customer names in this document.



60. These examples from Tyson and Sanderson reflect a broader trend. As Tyson and Sanderson were raising prices, industry-wide profit margins increased dramatically for broiler chicken processors in 2013 and 2014, according to Agri Stats data.

**ANSWER:** To the extent the allegations contained in Paragraph 60 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

### 3. Cargill Used Agri Stats Sales Data to Increase Turkey Prices

61. Turkey processors used Agri Stats in a similar manner. In a 2016 presentation slide entitled “Why AgriStats & Strategic Pricing?” (Fig. 9), Cargill explained that Agri Stats provides “insight into competitor’s pricing” and identifies “what the market will bear.” The “goal” of Agri Stats and Strategic Pricing is “forward motion,” represented by figures raising a curve.



Figure 9

**ANSWER:** To the extent the allegations in Paragraph 61 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 61 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

62. Consistent with the figures increasing the price curve, Cargill used Agri Stats data to raise prices. Beginning in late 2013, Cargill began relying on competitor data exchanged through Agri Stats to “increase [its] Benchmarking focus.” As shown below (Fig. 10), Cargill increased its prices from three cents below the national average to well above the national average as measured by Agri Stats’ net dock price. It would maintain those increased prices at least into 2016.

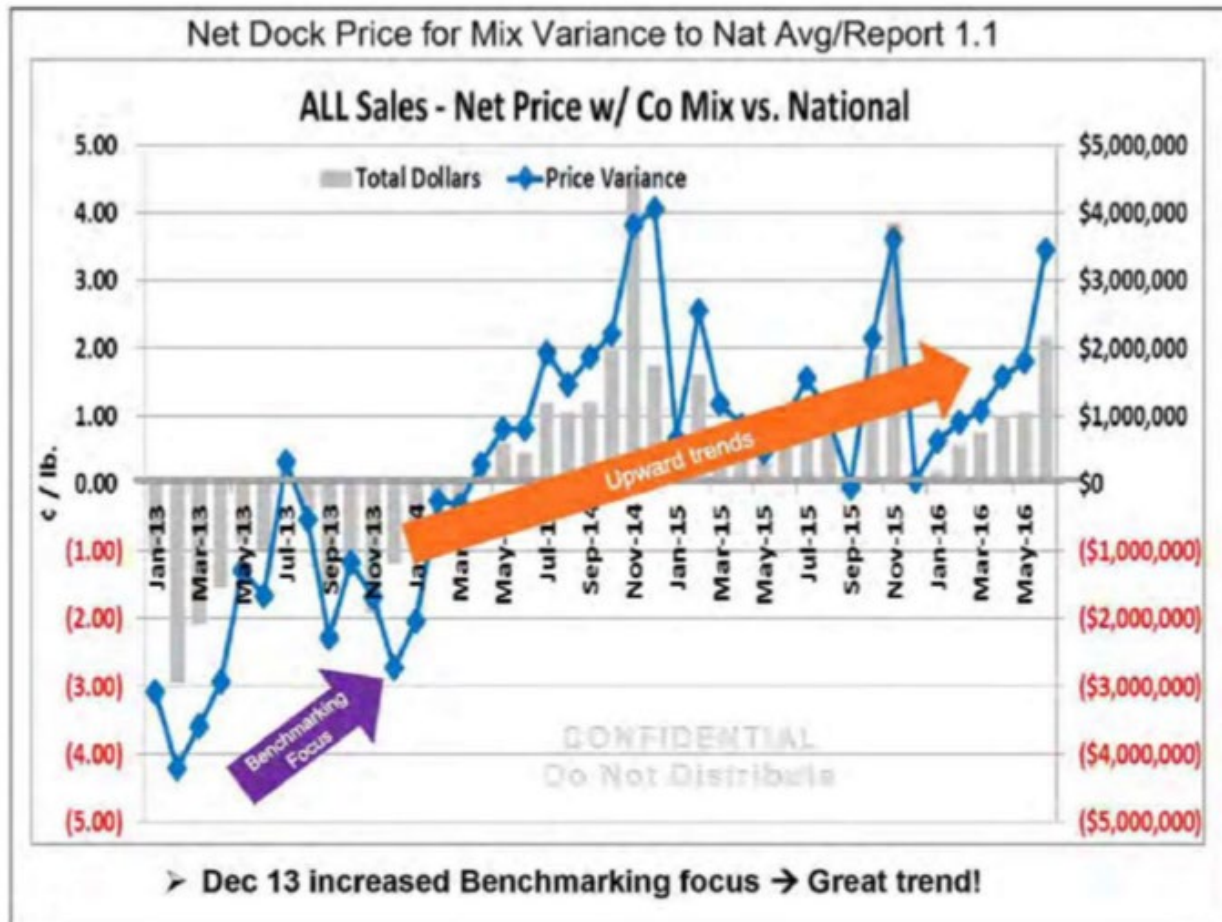


Figure 10

**ANSWER:** To the extent the allegations in Paragraph 62 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 62 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

#### 4. Butterball Used Agri Stats Sales Data to Increase Turkey Prices

63. Butterball likewise used Agri Stats sales data to increase turkey prices. In April 2014, Butterball sales executives and employees sent around Agri Stats sales data noting “poor results versus the competition.” These “poor results” were turkey products that were priced below the industry average. A Butterball vice president sent a list of “Product Group/SKU[s]” identifying these products. Another vice president noted that “[m]arkets are at historic highs” and Butterball needed to take advantage of the higher prices “everywhere we can.”

**ANSWER:** To the extent the allegations in Paragraph 63 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 63 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

64. In response, a Butterball sales employee stated that Butterball had increased or would increase targeted turkey product prices for a number of large food distributors.

**ANSWER:** To the extent the allegations in Paragraph 64 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 64 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the remaining allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.



65. While Butterball and Cargill were increasing turkey prices, market-wide turkey prices increased in a way that cannot be explained by underlying costs of production. In fact, costs actually *decreased* during this period according to Agri Stats data. Yet, consistent with Agri Stats' advice, processors raised prices. According to Agri Stats' own records, turkey processors were able to increase margins by more than 300% between 2013 and 2016 and achieved historic profitability.

**ANSWER:** To the extent the allegations in Paragraph 65 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 65 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

##### **5. JBS Used Agri Stats Sales Data to Increase Pork Prices**

66. Pork processors also used Agri Stats sales data to increase prices. Referring to its focus on Agri Stats pricing data as "margin-based" decision-making, JBS regularly used Agri Stats to monitor prices and pursue price increases on items sold below the national average price. For example, in August 2010, a JBS executive instructed his sales team to identify SKUs that "are LOW relative to the industry." A JBS employee promptly identified ten products to consider for price increases based on Agri Stats data and suggested in several cases that JBS seek further guidance from Agri Stats on pricing. Here again, JBS's efforts were part of a broader trend. Profit margins for pork packers as measured by Agri Stats grew strikingly—over 50% from 2010 to 2011.

**ANSWER:** To the extent the allegations in Paragraph 66 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 66 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief

concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

**B. Agri Stats' Give-to-Get Policy Makes it Easier for Processors to Increase Prices Due to Information Asymmetry**

67. Processors could increase prices so readily, in part, because meat purchasers such as grocery stores and restaurants do not have access to the same information. Agri Stats boasts that no other service offers anything close to what it provides to its subscribers. As one agricultural economist and former EMI employee admitted, "Agri Stats . . . [has] access to information about production costs, processes, yields, and structural information that no other economist or analyst can obtain." Agri Stats' President stated that "Agri Stats['] biggest strength is that there are no other companies that do [what] we do." Its processor co-conspirators agree; one Tyson executive stated that no other service provides this kind of comprehensive information regarding sales data. Yet Agri Stats has refused to make the competitively sensitive information it readily distributes among competing processors available to purchasers.

**ANSWER:** Agri Stats denies the allegations in Paragraph 67 of the Second Amended Complaint.

68. This information asymmetry contributes to processors' ability to ratchet prices upward. Each processor can identify which of its products are priced below its competitors' and raise prices on those products with less concern about price competition. By contrast, purchasers cannot use the same information to identify when they are paying comparatively high prices because Agri Stats refuses to sell them its reports. Other statistical services available to the public (either for free or by subscription) are not substitutes for the data shared between the processors via Agri Stats because no other service has the same access to processors' internal ledgers.

**ANSWER:** Agri Stats denies the allegations in Paragraph 68 of the Second Amended Complaint.

69. In a competitive market, a processor may find it advantageous to lower its prices, increase its sales, and thereby grow its market share. But Agri Stats reports do not tell a processor how much additional profit it could make by selling more meat at a lower price than its rivals. One executive at pork processor Smithfield testified that he did not know of a single instance in which Smithfield used Agri Stats sales reports to decrease price. A Tyson sales executive similarly testified that he was unaware of a single instance in which his broiler sales team used Agri Stats information to reduce prices.

**ANSWER:** To the extent the allegations in Paragraph 69 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or

description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 69 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

70. Encouraging price competition runs counter to Agri Stats' goal of increasing the profitability of the *industry* as a whole. Agri Stats has stated that its "paradigm" is to "increase [the] profitability of all participants." Thus, Agri Stats enables and encourages participants to "chas[e] price" and boost collective *industry* profits, not compete to maximize the individual profits of the respective processors.

**ANSWER:** Agri Stats denies the allegations in Paragraph 70 of the Second Amended Complaint.

71. Agri Stats' "rankings" are a case in point. In its sales reports, for example, Agri Stats ranks processors based on how high their prices are. The processor charging the highest prices is ranked first, and the processor charging the least is ranked last, regardless of total profits. These rankings, which depend on competitively sensitive information collected by Agri Stats, push markets toward anticompetitive pricing by promoting increased margins.

**ANSWER:** Agri Stats denies the allegations in Paragraph 71 of the Second Amended Complaint.

72. Certain processors have even used Agri Stats' rankings in the sales reports to give bonuses for sales staff. These employees are therefore incentivized to sell less volume at higher prices rather than higher volume at lower prices, which results in higher prices for consumers.

**ANSWER:** Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the first sentence in Paragraph 72 of the Second Amended Complaint, and therefore denies the same. Agri Stats denies the allegations of the second sentence of Paragraph 72.

### **C. Agri Stats Enables Processors to Restrict Supply**

73. Price and output are interrelated. Generally, when demand stays constant, decreased supply of a product will increase its price. Broiler chicken, pork, and turkey processors

have used competitively sensitive information exchanged through Agri Stats to restrict supply, which also leads to stabilized and inflated prices.

**ANSWER:** Agri Stats denies the allegations in Paragraph 73 of the Second Amended Complaint.

74. Agri Stats offers more comprehensive, detailed information than publicly available sources because Agri Stats collects data that comes directly from the internal ledgers of the processors. The information also covers multiple aspects of the production process, and includes metrics that indicate current inventories and future production.

**ANSWER:** Agri Stats denies the allegations in Paragraph 74 of the Second Amended Complaint.

75. By using Agri Stats to monitor each other's production plans, processors are more easily able to coordinate supply restraints and confidently ensure that no one is attempting to increase production and expand market share. Sanderson Farms and Pilgrim's, for example, both explicitly discussed making broiler supply decisions based on Agri Stats data during earnings calls.

**ANSWER:** Agri Stats denies the allegations in Paragraph 75 of the Second Amended Complaint.

76. In the broiler chicken and turkey industries, for example, Agri Stats reports the number of "breeder" chicks placed at the breeder farms affiliated with each processor in its live production reports. The time from breeder chick placement to meat delivery is highly regular, and, unsurprisingly, the number of breeder chicks placed closely predicts final output. As mentioned above, the Agri Stats user manual for broiler processors states that Agri Stats collects and publishes breeder data to allow subscribers to "help forecast Broilers & pounds produced for future months." The Agri Stats user manual for turkey processors contains a similar statement. When processors know the future production plans of their competitors, they can more easily coordinate supply restraints and anticipate when price increases will be successful.

**ANSWER:** To the extent the allegations in Paragraph 76 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 76 of the Second Amended Complaint.

77. Agri Stats reports on many other supply metrics. Processors can monitor broiler chicken output through hatchery utilization (i.e., the percentage of incubator space in a hatchery

that is filled with eggs), density of broiler housing, average flock size, and average age at time of slaughter. Even metrics that may not obviously implicate supply to a layperson can reveal competitively sensitive information. For example, processors use certain metrics in Agri Stats reports to estimate a company's average bird weight, which is one of the variables processors use to increase or decrease total output. Sanderson Farms specifically mentioned monitoring competitor bird weights in a May 2013 investor call.

**ANSWER:** Agri Stats denies the allegations of Paragraph 77.

78. Agri Stats turkey reports included similar metrics that allowed competitors to track output, including breeder chicks placed, average flock size, bird age, bird weight, density of turkey breeder housing, hatchery utilization, and egg set capacity per week. Butterball, for example, deanonymized the Agri Stats data to track specific competitors' output trends.

**ANSWER:** Agri Stats denies the allegations of Paragraph 78.

79. The pork reports included metrics allowing processors to estimate the total number of pigs slaughtered and total pounds produced at competing facilities. These metrics include "head killed per operating hour," the number of shifts operated, the number of hours per week each employee on a shift works, and live pig weight.

**ANSWER:** Agri Stats denies the allegations of Paragraph 79.

80. In the broiler chicken market, Agri Stats and EMI also distributed time-sensitive information regarding current inventories through a "Freezer Inventory Report." This weekly report shows the aggregate pounds of various broiler chicken cuts in processors' on-site freezers. An example is shown in Figure 11.

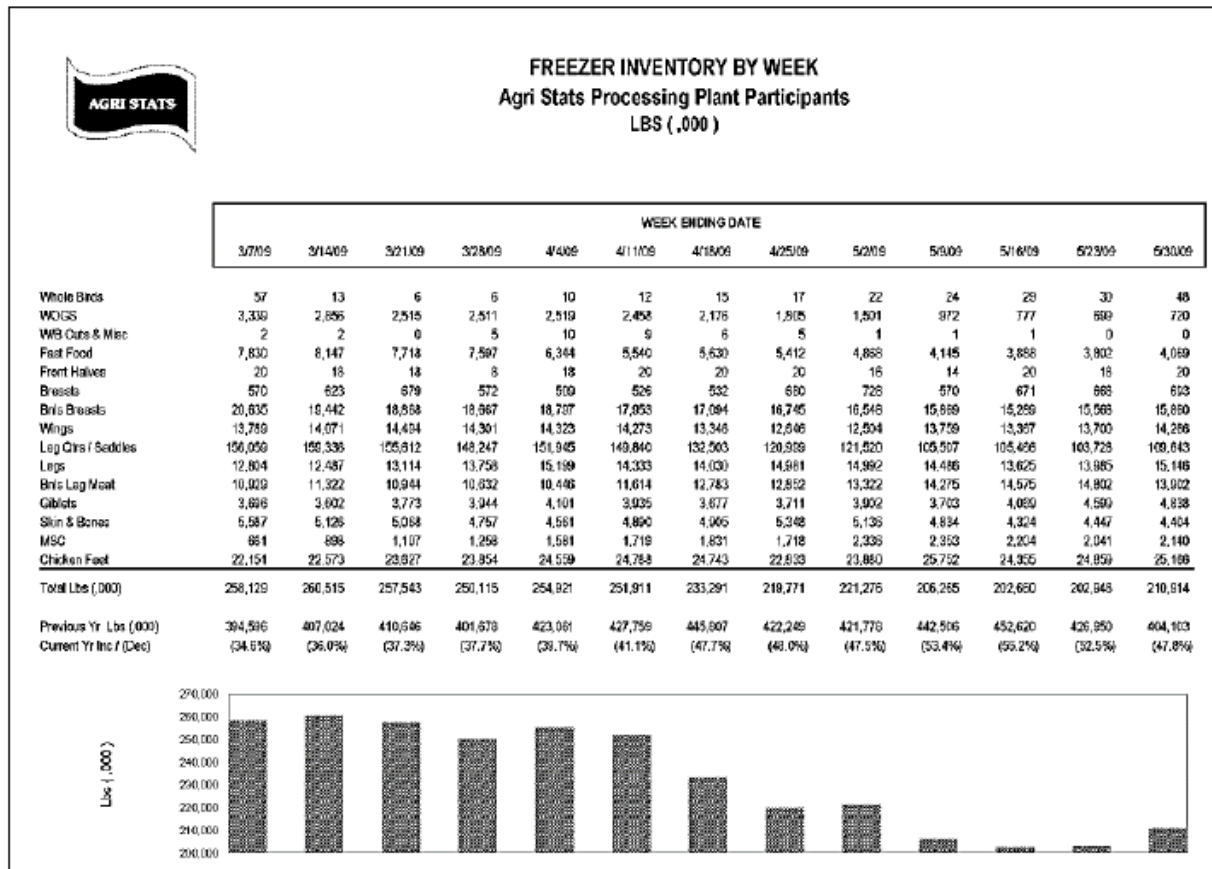


Figure 11

**ANSWER:** To the extent the allegations in Paragraph 80 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

81. Agri Stats advised processors that freezer inventory closely correlates with price, and processors understood that connection. Shortly after receiving a March 2011 Freezer Inventory Report showing six weeks of inventory reductions, Mountaire Farms' CEO wrote, "Tell those sales people to raise sales prices . . . [T]he tide has turned and our sales people must demand more and not be apologetic . . ."

**ANSWER:** To the extent the allegations in Paragraph 81 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri

Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 81 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

82. Although EMI produced and audited the Freezer Inventory Report, it branded the report with the Agri Stats logo, referred to it as the “Agri Stats Weekly Inventory Report” and made the report available only to processors.

**ANSWER:** To the extent the allegations in Paragraph 82 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in this Paragraph.

83. Agri Stats provided pork processors with an “Export Sales” report as another way to monitor supply. Pork processors have regularly exploited the export market to constrain domestic supply, even when export sales result in a loss, because restraining supply significantly increases domestic pork prices. A Smithfield economist estimated that a 1% reduction (or “disappearance”) in domestic supply would lead to a 3% to 5% domestic price increase.

**ANSWER:** Agri Stats denies the allegations of Paragraph 83.

84. The same Smithfield economist was asked in an internal email, “[W]hy do we want to go to the export at a loss?” He replied, “Very simple: More exports translate to higher meat value [domestically].” This statement makes sense only if Smithfield was confident that no other processor would capture lost domestic sales. Smithfield had reason to be confident. For example, Seaboard wrote in a weekly update in 2012: “We continue to chase all the export opportunities we can find to keep excess product off the US market.” Tyson’s CEO made similar comments as well.

**ANSWER:** To the extent the allegations contained in Paragraph 84 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations,



and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

85. The Agri Stats export sales reports allowed pork processors to track the quantity of exports and pricing in non-U.S. countries for identified pork items. Pork processors, including Tyson, Smithfield, and Cargill, monitored fluctuations in the volume of exported pork based on pork cut and country and asked Agri Stats to perform various custom analyses on exports.

**ANSWER:** To the extent the allegations in Paragraph 85 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 85 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

86. Just as with prices, Agri Stats has enabled and encouraged processors to maintain output discipline. Agri Stats routinely sent analyses to processors (sometimes through EMI) encouraging them to “exercise restraint.” For example, in September 2014, an Agri Stats vice president circulated a presentation to various broiler companies, including Wayne Farms, Pilgrim’s, Perdue, and Tyson, commenting that “[t]his summer every week sets a record for economic returns for the U.S. broiler industry.” The vice president reminded the processors that “the prospects for coming months remain extremely favorable” because “[b]reeder placements are not increasing anywhere near enough to cause a surplus of birds through at least the first half of 2015.” He called the numbers “stunning results for the industry.” The vice president effusively praised processors for maintaining “control” over production levels, signaling that they should restrain output to continue “the amazing times in the chicken business.” Agri Stats reports provided further assurance that each processor could restrict its own output by monitoring competitor output through the reports Agri Stats provided.

**ANSWER:** Agri Stats denies the allegations of Paragraph 86.



**D. Agri Stats Enables Competitors to Exchange Plant and Company Level Information**

**1. Processors Exchange and Deanonimize Agri Stats Reports**

87. Agri Stats reports not only enable the exchange of competitively sensitive price and supply metrics, they also make it easier for processors to exchange other facility-level or company-level information directly—a practice Agri Stats enabled and knew occurred.

**ANSWER:** Agri Stats denies the allegations of Paragraph 87.

88. Many Agri Stats reports provide disaggregated, facility-level data for each participating facility. The inclusion of comparable, facility-level data makes the sharing of competitively sensitive information simpler and more likely to be anticompetitive.

**ANSWER:** Agri Stats denies the allegations of Paragraph 88.

89. Although Agri Stats ostensibly anonymizes the data to conceal each company's and facility's identity, Agri Stats knows that processors are able to deanonymize the reports. Once deanonymized, the reports allow processors to monitor specific competitors' output, cost, and price metrics even more closely. Processors can deanonymize Agri Stats reports without their competitors' assistance. Some metrics contained in Agri Stats reports are so detailed that deanonymization becomes fairly straightforward. A Butterball employee once boasted, "I can pick the companies for rankings with 100% certainty" using information found in Agri Stats' turkey Bottomline Report.

**ANSWER:** Agri Stats denies the allegations of Paragraph 89.

90. Once a facility is identified—for example, based on a unique feature related to its operations or product offerings that industry insiders would recognize—the plant can be tracked across different reports using that identifying metric. Tyson's Director of Competitive Intelligence and Analysis testified that once he was able to identify facilities "on the operations profit page, I can go back through the other books to identify their data elsewhere. Agristats often takes data to 4 decimal places which allows that number to be identified somewhere else in the books (live, plant, processing mix, sales, etc...)." Similarly, a Pilgrim's employee who previously worked at Agri Stats informed a work colleague that information in the Operations Profits book could help identify particular processors.

**ANSWER:** To the extent the allegations in Paragraph 90 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 90 of the Second Amended Complaint relate to third

parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

91. Deanonymization became a regular part of many processors' analyses of Agri Stats reports. A Mountaire employee regularly deanonymized Agri Stats' broiler chicken reports, considering it part of her official job duties. Other chicken processors such as Tyson, Pilgrim's, Perdue, Sanderson Farms, Wayne Farms, Amick Farms, Koch Foods, and Case Farms have deanonymized various Agri Stats broiler chicken reports.

**ANSWER:** To the extent the allegations contained in Paragraph 91 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

92. Tyson held regular internal meetings in which its employees analyzed deanonymized Agri Stats pricing information about certain cuts of pork from its competitors' facilities. Dubbed the "naming process," Tyson's process for deanonymizing pork facilities involved multiple employees from different departments. Besides Tyson, Seaboard/Triumph and Smithfield deanonymized various Agri Stats pork reports.

**ANSWER:** To the extent the allegations in Paragraph 92 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 92 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

93. Cargill tracked its competitors' pricing based on the turkey Retail and Deli report provided by Agri Stats. A December 2015 spreadsheet from Cargill (Fig. 12) showed the company tracking the invoice prices and net sales prices of its largest turkey competitors—Butterball

(“BB”), Jennie-O (“JOTS”), Cooper Farms, and Perdue—in Agri Stats reports (referred to below as “A/S”):

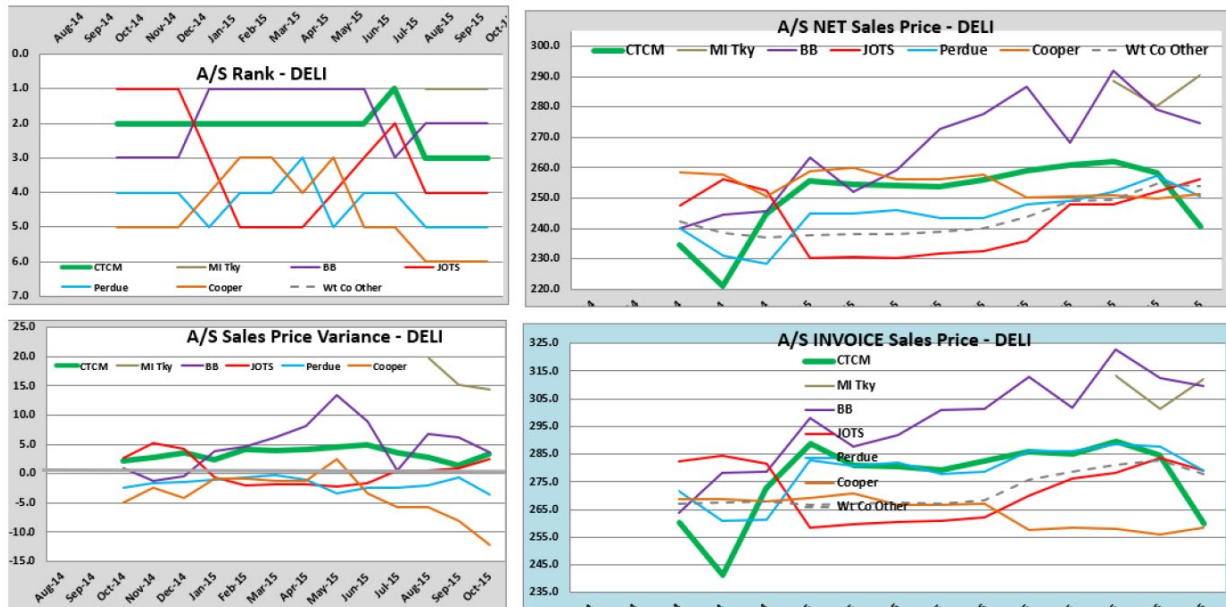


Figure 12

**ANSWER:** To the extent the allegations in Paragraph 93 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 93 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

94. Like Cargill, Butterball, Jennie-O, Cooper Farms, Perdue, and Farbest also deanonymized various Agri Stats turkey reports.

**ANSWER:** To the extent the allegations contained in Paragraph 94 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations,

and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

95. By including a list of contributing facilities at the beginning of each report, Agri Stats makes the deanonymization process easier. At least one subscriber told Agri Stats that it would stop subscribing to certain reports if the company did not list participating companies and facilities on those reports.

**ANSWER:** Agri Stats denies the allegations in Paragraph 95 of the Second Amended Complaint.

96. Processors informed Agri Stats personnel over the years that several of its subscribers deanonymized its reports. Nevertheless, Agri Stats took no action to stop this practice and continued to provide the same reports and consulting services.

**ANSWER:** Agri Stats denies the allegations in Paragraph 96 of the Second Amended Complaint.

**2. Agri Stats Employees Directly Facilitate the Exchange of Competitor Data**

97. Agri Stats employees also served as more direct conduits for the exchange of competitively sensitive information. For example, in 2016, a Cargill employee emailed its account manager at Agri Stats, relaying that certain turkey purchasers complained that Cargill was overpricing ground turkey compared to its competitors. The Cargill employee explained that this conflicted with her understanding of the Agri Stats data.

**ANSWER:** Agri Stats denies the allegations in Paragraph 97 of the Second Amended Complaint.

98. The Agri Stats account manager not only confirmed Cargill's interpretation, but she also provided specific pricing information for each grocery store at issue:

On Wal-Mart 85% - you are about 20 cents higher than other primary supplier but 11 cents under another supplier with less volume. 93% is well under the leading supplier by 27 cents. Ground white is also well under other suppliers ranging from 7 cents to under 65 cents under.

HEB 85% - you are 24 cents higher than other supplier.

Wakefern 85% - you are 38 and 32 cents higher than other 2 suppliers. 93% looks right in line. Ground white is in line with 1 other supplier but under 2 other suppliers with less volume by 45 cents.

**ANSWER:** To the extent the allegations in Paragraph 98 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 98.

99. By providing Cargill with detailed information about competitors' prices for specific purchasers, Agri Stats provided Cargill with an advantage that was unavailable to Cargill's customers.

**ANSWER:** Agri Stats denies the allegations in Paragraph 99 of the Second Amended Complaint.

100. In another incident, the same Agri Stats account manager and Cargill employee referenced "ad hoc comments" made by the Agri Stats employee during an onsite visit before asking, "If we set a goal to be 3¢ above Natl Ave – will we be beating our key competitors? Can we spot check this with you say 1/quarter to ensure we're focused on the right pricing improvements?"

**ANSWER:** To the extent the allegations in Paragraph 100 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 100.

101. The Agri Stats employee responded with a list of product categories and made specific recommendations for how much Cargill should raise prices. For example, the Agri Stats employee stated "Food Service[:] Cargill \$116k fav[orable] – most opportunity here: ranking economic impact you come out 7th. The #1 company is \$4.7m fav. I would shoot for being \$2.5m fav which would put you competitive with who you are chasing in food service."

**ANSWER:** To the extent the allegations in Paragraph 101 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or

description that is inconsistent therewith or taken out of context. Agri Stats denies the remaining allegations in Paragraph 101.

102. These individual interactions align with Agri Stats' mission to increase processors' profitability through increased prices and reduced output. Despite managing the exchange of sensitive information between competitors, Agri Stats has no antitrust compliance program. It does not conduct antitrust training for its employees, despite regularly consulting with direct competitors.

**ANSWER:** Agri Stats admits that it does not have a written antitrust compliance policy. Agri Stats denies the remaining allegations in Paragraph 102.

**VI. AGRI STATS ENTERED INTO ANTICOMPETITIVE AGREEMENTS TO SHARE COMPETITIVELY SENSITIVE INFORMATION WITH PROCESSORS IN THE BROILER CHICKEN, PORK, AND TURKEY INDUSTRIES**

103. Agri Stats agreed with the broiler chicken, pork, and turkey processors identified in paragraph 14 above to exchange competitively sensitive information and encouraged processors to use it for the anticompetitive purposes of stabilizing and raising prices and restricting supply. As part of the conspiracy, processors used Agri Stats to exchange competitively sensitive information. The structure of the industries, nature of the information shared, market power of the subscribers, and purpose and effect of the information-sharing scheme confirm that each of these agreements unreasonably restrains trade.

**ANSWER:** Paragraph 103 of the Second Amended Complaint contains legal assertions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

**A. Agri Stats and its Co-Conspirators Agreed to Share Competitively Sensitive Information**

104. In each of the broiler chicken, pork, and turkey markets, the processors agreed with Agri Stats and with each other to pay Agri Stats to manage the exchange of competitively sensitive information among the processors. The Agri Stats broiler chicken information-exchange conspiracy remains ongoing. Agri Stats paused its pork and turkey reporting around late 2019, but Agri Stats wants to resume the reporting in the future.

**ANSWER:** The allegations of Paragraph 104 state legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies the allegations of Paragraph 104.

105. Each processor agreed to provide current, competitively sensitive information to its competitors through Agri Stats, knowing it would receive reports that included current, competitively sensitive information of its competitors in return. By entering into an agreement with Agri Stats, each processor also agreed with competing processors that subscribed to Agri Stats to exchange competitively sensitive information in the form Agri Stats provided. Each processor ratified these agreements each time it submitted data to Agri Stats. Tyson internally referred to the decision to participate in Agri Stats broiler reports as “support[ing] an *industry effort*” (emphasis added).

**ANSWER:** The allegations of Paragraph 105 state legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies the allegations of Paragraph 105.

106. Agri Stats regularly listed current subscribers in presentations when pitching Agri Stats’ services to new and existing clients, leaving no doubt about who was participating in the information-exchange scheme and warning them that their competitors would enjoy an advantage if they demurred. New subscribers understood that they would provide competitively sensitive information to current subscribers and receive competitively sensitive information from these current subscribers in return.

**ANSWER:** Agri Stats admits that it often included a list of the subscribing facilities at the beginning of each report. Agri Stats denies the remaining allegations in Paragraph 106 of the Second Amended Complaint.

107. Agri Stats’ “give-to-get” policy reinforced the collective nature of the agreement, and the publication of the participants at the front of every report allowed Agri Stats’ subscriber customers to monitor the conspiracy and ensure that if they were providing competitively sensitive information, their competitors were doing so as well. The processors in each of the broiler chicken, pork, and turkey industries understood that the greater the participation in the Agri Stats scheme, the more useful the scheme would become.

**ANSWER:** The allegations of Paragraph 107 state legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies the allegations of Paragraph 107.

**B. The Nature of the Information Collected and Distributed by Agri Stats Has Facilitated the Suppression of Competition Among Processors**

108. Agri Stats compiles highly sensitive competitive information that processors would not share directly and redistributes that information in ways that allow processors participating in



the scheme to know where they could stabilize and raise prices and when they could restrict production.

**ANSWER:** The allegations of Paragraph 108 state legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies the allegations of Paragraph 108.

109. The information exchanges operated by Agri Stats share several characteristics that enable processors to suppress competition:

a. Sensitivity: Agri Stats reports competitively sensitive price, output, and cost data that is not otherwise available to processors. Processors can and do deanonymize certain information and link data to particular competitors.

b. Timeliness: Agri Stats' information is current. Its weekly reports generally supply information from the prior week, while its monthly reports include data from the past one-to-two months. Some information is forward-looking and predictive.

c. Detail: Agri Stats provides highly detailed information that allows processors to dampen competition. Agri Stats reports cost and production information on a facility-by-facility and company-by-company basis, allowing processors a detailed look at their competitors' operations. Agri Stats provides price rankings as well as average and top quartile sales prices for products identified at the near-SKU level, allowing processors to see how their sales compare to market prices on a product-by-product basis.

d. Asymmetry: Agri Stats prohibits non-processors from purchasing Agri Stats' information, creating an information asymmetry between processors and purchasers that contributes to higher prices.

**ANSWER:** Paragraph 109 of the Second Amended Complaint contains legal assertions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

### **C. The Market Power of Agri Stats' Co-Conspirators**

110. Collectively, the participating broiler processors (listed in paragraph 14) have market power over the sale of broiler chicken. They have accounted for at least 90% of the broiler chicken market from 2008 to the present. Agri Stats itself has repeatedly estimated that its broiler chicken subscribers made up 98% of the broiler chicken market. Collectively, Agri Stats' broiler processor co-conspirators have the power to restrict output and increase prices in the broiler chicken market.



**ANSWER:** Paragraph 110 of the Second Amended Complaint contains legal assertions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

111. Collectively, the participating pork processors (listed in paragraph 14) had market power over the sale of pork. They have accounted for at least 80% of the pork market from 2008 to 2019, the time period during which Agri Stats was still issuing pork reports. During this period, Agri Stats repeatedly claimed that it covered 90% of the pork market as measured by number of pigs processed. Collectively, Agri Stats' pork co-conspirators had the market power to restrict output and increase prices in the pork market when Agri Stats was still issuing pork reports. Those same pork processors would collectively have market power today if they resumed their information exchange through Agri Stats.

**ANSWER:** Paragraph 111 of the Second Amended Complaint contains legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

112. Collectively, the participating turkey processors (listed in paragraph 14) had market power in the market for the sale of turkey. They have accounted for approximately 90% of the turkey market from at least 2008 until 2018.<sup>23</sup> During this period, Agri Stats repeatedly claimed that it covered 95% of the turkey market. Collectively, Agri Stats' turkey co-conspirators had the power to restrict output and increase prices in the turkey market. Those same turkey processors would collectively have market power today if they resumed their information exchange through Agri Stats.

**ANSWER:** Paragraph 112 of the Second Amended Complaint states legal conclusions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

**D. Agri Stats' Conduct Has the Purpose and Effect of Suppressing Competition, Increasing Prices, and Limiting Supply**

113. Agri Stats understands that its reports have enabled broiler chicken, pork, and turkey processors to stabilize and increase prices and reduce supply. Agri Stats regularly identifies "opportunities" for processors to raise prices or reduce supply by collecting and analyzing the competitively sensitive information provided by processors. Agri Stats refuses to offer its reports to processors' customers.

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<sup>23</sup> Agri Stats continued producing turkey reports in 2019, but certain large turkey processors no longer participated.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 113 of the Second Amended Complaint.

114. Agri Stats seeks to profit from its anticompetitive information exchanges. Its customers want a service that will allow them to increase profitability through anticompetitive pricing and output decisions. Thus, Agri Stats has knowingly created a product that allows its subscribers to do just that.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 114 of the Second Amended Complaint.

115. By participating in these anticompetitive information exchanges, Agri Stats and its processor co-conspirators have harmed and continue to harm the competitive process in the broiler chicken, pork, and turkey markets. Rather than allowing the ordinary give and take of the marketplace to determine price and output, Agri Stats and its co-conspirators have distorted each alleged market by asymmetrically sharing competitively sensitive information. In each market, the processor-subscribers used Agri Stats information to stabilize and increase prices or reduce supply or both.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 115 of the Second Amended Complaint.

116. Even standing alone, Agri Stats' agreements with processors allowed them to suppress competition among them. The information provided to processors allowed them to pursue strategies that they likely would not have absent the agreements. Each participating processor could more closely align its prices and output with those of its competitors, harm the competitive process, distort the bargaining and price-setting mechanisms, and suppress competition. A key purpose of Agri Stats' reports is to enable processors to suppress competition, stabilize and increase prices, and reduce supply.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 116 of the Second Amended Complaint.

117. Thus, the effects, probable and actual, of Agri Stats' information-exchange schemes are to stabilize and increase prices, decrease supply, or both, in the broiler chicken, pork, and turkey markets.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 117 of the Second Amended Complaint.

118. There is no legitimate procompetitive justification for Agri Stats' conduct.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 118 of the Second Amended Complaint.

## **VII. RELEVANT MARKETS**

119. Agri Stats has orchestrated an anticompetitive information-sharing scheme in at least three relevant markets: (i) broiler chicken sold in the United States, (ii) pork sold in the United States, and (iii) turkey sold in the United States.

**ANSWER:** Paragraph 119 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

### **A. The Sale of Broiler Chicken in the United States Is a Relevant Market**

120. The sale of broiler chicken meat in the United States is a relevant market. Broiler chicken refers to broiler chicken meat that comes in a variety of forms, fresh or frozen.

**ANSWER:** Paragraph 120 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

121. Academic estimates show that broiler chicken demand elasticity is low, indicating that there are no close economic substitutes for chicken. Academic estimates for cross-elasticity indicate that pork, turkey, and beef are not close substitutes for chicken.

**ANSWER:** Paragraph 121 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

122. Consumers find chicken to be distinct from other proteins. Most consumers view chicken as healthier and cheaper than red meats like beef and pork, and they eat chicken in different contexts than turkey, which is generally consumed around the holidays, in ground form, and as deli meat. Turkey is not served in restaurants as often as chicken—a basic fact that turkey processors like Cooper Farms have noted.

**ANSWER:** Paragraph 122 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

123. The broiler chicken conspirators' behavior reflects that they considered the sale of broiler chicken meat to be a relevant market. Agri Stats has produced standard reports for broiler chicken processors to learn highly granular information about their competitors' operations and sales. Agri Stats and EMI have developed and marketed specific services targeted to broiler chicken processors that are not available, for example, to the processors of other meats like turkey. Agri Stats frequently has provided the combined market share for broiler chicken processors that participate in its reports, indicating that Agri Stats believes the sale of broiler chicken is a market.

**ANSWER:** Paragraph 123 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

124. Large protein purchasers have dedicated procurement personnel for chicken (in its various forms). Processors that operate in multiple protein industries, like Tyson, JBS (Pilgrim's), and Perdue, have separate divisions for the sale of chicken. Grocery stores group chicken products separately from pork, turkey, and beef products, reflecting that consumers view the proteins differently.

**ANSWER:** To the extent the allegations contained in Paragraph 124 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

125. Industry publications and analysts like WATT Poultry consider broiler chicken meat to be a distinct economic unit. Broiler processors and industry publications, including Agri Stats, consider whole bird composite prices to be relevant metrics when assessing prices and demand for broiler chicken.

**ANSWER:** To the extent the allegations contained in Paragraph 125 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations,

and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

126. The market for broiler chicken meat is concentrated. The top three processors, Tyson, Pilgrim's, and Sanderson-Wayne, constitute over 50% of the market as measured in pounds of broiler chicken processed. The top ten firms account for 80% of the market. A 2012 economic analysis prepared for broiler chicken processors described the broiler chicken market as "highly concentrated."

**ANSWER:** Agri Stats denies the allegations of Paragraph 126.

127. There are high barriers to becoming a broiler processor. The start-up capital necessary to compete with today's broiler chicken processors would be substantial. Broiler chicken processors have large economies of scale, utilizing large and expensive production facilities. For example, Tyson estimated the construction costs of one new broiler chicken complex to be \$320 million in 2017. Without those economies of scale, it would be extremely difficult to compete. Broiler chicken processors tend to be vertically integrated, meaning a single company controls most aspects of the supply chain. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial "know how," and an opportunity to negotiate with large broiler chicken purchasers. A new company fitting these criteria will be rare.

**ANSWER:** Paragraph 127 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

128. Broiler chicken is a commodity. The broiler chicken meat of one processor, like Tyson, is highly interchangeable with—if even distinguishable from—the broiler chicken meat of another processor, like Pilgrim's. In commodity markets, firms compete primarily on price, as opposed to quality or some other form of product differentiation.

**ANSWER:** Paragraph 128 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

129. In sum, the broiler chicken market has characteristics that make information exchanges more likely to be anticompetitive. The broiler chicken market has relatively few competitors. Broiler chicken is a fungible, commodity product subject to inelastic demand. The barriers to entry in the broiler chicken market are very high.

**ANSWER:** Paragraph 129 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

**B. The Sale of Pork in the United States Is a Relevant Market**

130. The sale of pork in the United States is a relevant market. Pork refers to pig meat that can come in a variety of forms, including fresh or frozen.

**ANSWER:** Paragraph 130 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

131. Pork does not have any close economic substitutes. Academic estimates show that pork demand elasticity is low, indicating that there are no close economic substitutes for pork. Academic estimates for cross-elasticity indicate that chicken, turkey, and beef are not close substitutes for pork.

**ANSWER:** Paragraph 131 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

132. Consumers find pork to be distinct from other proteins. Consumers purchase less pork than chicken or beef and tend to value pork more for its taste than its health benefits or cost. Pork consumption has remained mostly flat since the 1970s.

**ANSWER:** To the extent the allegations contained in Paragraph 132 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

133. The pork conspirators' behavior shows that they considered pork to be a relevant market. Agri Stats has produced standard reports to enable pork processors to learn highly granular information about their competitors' operations and sales. Agri Stats and EMI have developed and marketed specific services targeted to pork processors that are not available to, for example, the producers of other meats like beef. Agri Stats frequently has provided the market shares of the

pork processors that subscribe to its services, indicating that Agri Stats believes it is a distinct market. Pork processors frequently have referred to a “pork market.”<sup>24</sup>

**ANSWER:** Paragraph 133 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required and the allegations contained in Paragraph 133 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent any further response is required, Agri Stats denies the remaining allegations in this Paragraph.

134. Large protein purchasers have dedicated procurement personnel for pork. Processors that operate in multiple protein industries, like Tyson, JBS, and Perdue, have separate divisions for the sale of pork. Grocery stores group pork products separately from chicken, turkey, and beef products, reflecting that consumers view the proteins differently.

**ANSWER:** To the extent the allegations contained in Paragraph 134 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

135. Pork processors and industry publications, including Agri Stats, view the pork “cutout” value to be a relevant metric when assessing prices and demand for pork. The pork cutout value (often referred to as the Pork Carcass Cutout) indicates the average value of a hog carcass based on the average prices received for the various cuts of pork produced during a given period of time.

**ANSWER:** To the extent the allegations contained in Paragraph 135 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations,

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<sup>24</sup> For example, Tyson CEO Donnie Smith stated in a 2016 earnings call: “The wholesale pork market has moved up and chicken has not moved up near as fast as the wholesale pork market.”

and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

136. Pork is a concentrated market. The top three pork processors, Smithfield, JBS, and Tyson, make up over 60% of the market as measured by slaughter capacity.<sup>25</sup> The top ten processors make up nearly 90% of the market. Pork processor Triumph stated internally that “the US pork processing industry is highly concentrated, with the top ten processors representing over 88.3% of the total federally inspected industry capacity as of late 2010.” Since then, the industry has become more concentrated.

**ANSWER:** Agri Stats denies the allegations of Paragraph 136.

137. There are high barriers to becoming a pork processor. The start-up capital necessary to compete with today’s pork processors would be substantial. Pork processors have large economies of scale, utilizing large and expensive processing facilities. Without those economies of scale, it would be extremely difficult to compete. The estimated cost of constructing a large pork processing facility today is approximately \$500 million. Many pork processors are vertically integrated, a trend that has been increasing in recent years. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial “know how,” and an opportunity to negotiate with large pork purchasers. A new company meeting these criteria will be rare.

**ANSWER:** Paragraph 137 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

138. Pork is a commodity. The pork of one processor is highly interchangeable with the pork of another processor. The pork processors themselves acknowledge that pork is a commodity. An internal document from Triumph stated that “[t]he wholesale pork market is first and foremost a commodity market, defined as a market where the products of all sellers are very similar, and price will tend to fluctuate depending on available supplies and level of interest . . . . In most cases, the wholesale pork marketplace is best summed up with the statement, ‘Pork is pork.’” Smithfield’s former Senior Manager of Pricing acknowledged that it is not possible to differentiate a processor’s pork once packaging is removed.

**ANSWER:** Paragraph 138 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required and the allegations contained in Paragraph 138 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief

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<sup>25</sup> Slaughter capacity is a typical method of measuring pork processor market shares.



concerning the truth of the allegations, and therefore denies the same. To the extent any further response is required, Agri Stats denies the remaining allegations in this Paragraph.

139. In sum, the pork market has characteristics that make information exchanges more likely to be anticompetitive.

**ANSWER:** Paragraph 139 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

**C. The Sale of Turkey in the United States Is a Relevant Market**

140. The sale of turkey in the United States is a relevant market. Turkey refers to turkey meat that comes in a variety of forms, fresh or frozen.

**ANSWER:** Paragraph 140 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

141. Academic estimates show that turkey demand elasticity is low, indicating that there are no close economic substitutes for turkey. Academic estimates for cross-elasticity indicate that chicken, pork, and beef are not close substitutes for turkey.

**ANSWER:** Paragraph 141 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

142. Consumers find turkey to be distinct from other proteins. Consumption of turkey grew considerably in the 1970s and 1980s and has remained relatively flat since. Consumers typically view turkey as a healthier, lower-fat protein than red-meat alternatives, but purchase turkey in fewer contexts than chicken. A large percentage of turkey is consumed during holidays (particularly Thanksgiving) as whole-birds; otherwise, consumers tend to purchase turkey in ground form or as deli meat.

**ANSWER:** To the extent the allegations contained in Paragraph 142 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations,

and therefore denies the same. Agri Stats denies the remaining allegations in this Paragraph.

143. The turkey conspirators' behavior reflects that they considered the sale of turkey to be a relevant market. Agri Stats' reports have grouped turkey processors together for comparison. Agri Stats and EMI have developed and marketed specific services targeted to turkey processors that they did not make available to processors of other meats, like chicken. Agri Stats frequently has referenced the collective market share of the turkey processors that subscribed to its turkey reports, indicating that Agri Stats believes it is a distinct market.

**ANSWER:** Paragraph 143 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies the allegations of Paragraph 143.

144. Processors that operate in multiple protein industries, like Tyson and Perdue, have separate divisions for the sale of turkey. Grocery stores group turkey products separately from chicken, pork, and beef products, reflecting that consumers view the proteins differently.

**ANSWER:** To the extent the allegations contained in Paragraph 144 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

145. Industry publications like WATT Poultry also consider turkey to be a separate economic market. Turkey processors and industry publications, including Agri Stats, use composite whole bird prices as relevant metrics for assessing price and demand of turkey.

**ANSWER:** To the extent the allegations contained in Paragraph 145 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

146. The turkey market is concentrated. The top four processors, Butterball, Jennie-O, Cargill, and Farbest, make up over 50% of the market as measured by live pounds processed. The top ten turkey processors make up over 80% of the market.

**ANSWER:** Agri Stats denies the allegations of Paragraph 146.

147. There are high barriers to becoming a turkey processor. The start-up capital necessary to compete with today's turkey processors would be substantial. Turkey processors have large economies of scale, utilizing large and expensive production facilities. For example, Prestage Farms estimated the construction costs of one new turkey processing facility to be \$150 million in 2021. Without those economies of scale, it would be difficult to compete.

**ANSWER:** Paragraph 147 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

148. Turkey processors tend to be vertically integrated. To compete effectively, a new entrant would need hundreds of millions of dollars, substantial "know how," and an opportunity to negotiate with large turkey purchasers. A new company meeting these criteria will be rare.

**ANSWER:** To the extent the allegations contained in Paragraph 148 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

149. Turkey is a commodity. The turkey of one processor is highly interchangeable—if even distinguishable—with the turkey of another processor. The turkey processors, along with industry analysts, refer to turkey as a commodity. For example, in an internal strategy document, Cargill refers to turkey as a "commodity business." Butterball noted internally that "Overall, RETAILERS do not see our product differentiation as meaningful. . . [.] because turkey products, like turkey bacon, are interchangeable regardless of brand.

**ANSWER:** Paragraph 149 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required and the allegations in Paragraph 149 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for

themselves and denies any characterization or description that is inconsistent therewith or taken out of context. To the extent a response is required and the allegations contained in Paragraph 149 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent any further response is required, Agri Stats denies the remaining allegations in this Paragraph.

150. In sum, the turkey market has characteristics that make information exchanges more likely to be anticompetitive.

**ANSWER:** Paragraph 150 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

#### **D. Geographic Market**

151. The United States is a relevant geographic market for the sale of broiler chicken, pork, and turkey. Agri Stats, the processors, courts, and industry specialists all analyze these meat markets on a national basis. Imports into the United States for each of these meats are minimal, with less than 1% of domestic broiler and turkey production imported and around 3% of domestic pork imported. Sales of these proteins in the United States must comply with U.S. law.

**ANSWER:** Paragraph 151 of the Second Amended Complaint states legal conclusions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

### **VIII. JURISDICTION, VENUE, AND COMMERCE**

152. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Agri Stats from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** Paragraph 152 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

153. The States of California, Minnesota, North Carolina, and Tennessee, by and through their respective Attorneys General, bring this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Agri Stats from violating Section 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** Paragraph 153 of the Second Amended Complaint states legal conclusions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

154. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), 1345.

**ANSWER:** Paragraph 154 of the Second Amended Complaint states legal conclusion as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph and specifically denies that this Court has subject matter jurisdiction over any putative claim relating to any Agri Stats reports related to pork or turkey.

155. The Court has personal jurisdiction over Agri Stats; venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because Agri Stats transacts business and is found within this District.

**ANSWER:** Paragraph 155 of the Second Amended Complaint states legal conclusions as to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

156. Multiple co-conspirator processors are headquartered in this District, including Hormel, which is headquartered in Austin, Minnesota and has been an Agri Stats pork and turkey subscriber, and Jennie-O, which is also headquartered in Austin, Minnesota and has been an Agri Stats turkey subscriber. Hormel has also received EMI reports.

**ANSWER:** To the extent the allegations contained in Paragraph 156 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to

relate to Agri Stats, Agri Stats denies the same and specifically denies the existence of any conspiracy of any type and the existence of any “co-conspirators.”

157. Gold’n Plump Poultry, an Agri Stats broiler subscriber until 2016, was headquartered in St. Cloud, Minnesota and operated a broiler processing facility in Cold Spring, Minnesota. In 2016, Pilgrim’s, an Agri Stats subscriber, purchased Gold’n Plump, including the Cold Spring facility. Pilgrim’s now exchanges information with Agri Stats regarding that Minnesota-based facility.

**ANSWER:** To the extent the allegations contained in Paragraph 157 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

158. Sparboe Farms is also a current Agri Stats egg subscriber headquartered in Litchfield, Minnesota.

**ANSWER:** To the extent the allegations contained in Paragraph 158 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

159. Agri Stats has executed contracts with Hormel and Jennie-O for which the governing law, jurisdiction, and venue is Minnesota. Agri Stats has given in-person presentations in Minnesota, including an in-person pitch to Hormel in which Agri Stats listed every Agri Stats subscriber in all proteins.

**ANSWER:** Agri Stats admits that its employees met, at times, with its customers Hormel and Jennie-O when they were subscribers to the now-defunct pork and turkey benchmarking reports. To the extent the allegations in Paragraph 159 of the Second Amended Complaint purport to characterize or describe documents or other sources, Agri Stats states that such documents speak for themselves and denies any characterization or

description that is inconsistent therewith or taken out of context. To the extent the allegations contained in Paragraph 159 of the Second Amended Complaint relate to third parties to this action, Agri Stats lacks knowledge or information sufficient to form a belief concerning the truth of the allegations, and therefore denies the same. To the extent the allegations in this Paragraph purport to relate to Agri Stats, Agri Stats denies the same.

160. Agri Stats has sent its reports to processors located in Minnesota in the broiler chicken, pork, and turkey industries. Agri Stats' conduct has harmed the United States markets for broiler chicken, pork, and turkey, which includes harm in Minnesota, as well as California, North Carolina, Tennessee, Texas, and Utah.

**ANSWER:** Agri Stats admits that it has sent reports to subscribers located in Minnesota. Agri Stats denies the remaining allegations in Paragraph 160 of the Second Amended Complaint.

161. The broiler chicken, pork, and turkey markets are national markets, and Agri Stats' and its co-conspirators' conduct has substantially affected interstate commerce in each of the broiler chicken, pork, and turkey markets.

**ANSWER:** Paragraph 161 of the Second Amended Complaint states legal conclusions to which no response is required. To the extent a response is required, Agri Stats denies any allegations in this Paragraph.

## **IX. VIOLATIONS ALLEGED**

### **A. Count 1: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Broiler Chicken Market**

162. Plaintiffs repeat and reallege each and every paragraph in this Complaint as if fully set forth herein.

**ANSWER:** Paragraph 162 of the Second Amended Complaint does not contain any factual allegations to which a response is required. To the extent a response is required, Agri Stats incorporates by reference its responses to each preceding Paragraph as if fully set forth herein.



163. Since at least 2008, Agri Stats and its broiler chicken processor co-conspirators have agreed with each other to exchange competitively sensitive information regarding prices, output, and costs. These agreements have unreasonably restrained trade, suppressed competition, and had the actual and likely effect of stabilizing and increasing prices and reducing output in the United States broiler chicken market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 163 of the Second Amended Complaint.

**B. Count 2: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Pork Market**

164. Plaintiffs repeat and reallege each and every paragraph of this Complaint as if fully set forth herein.

**ANSWER:** Paragraph 164 of the Second Amended Complaint does not contain any factual allegations to which a response is required. To the extent a response is required, Agri Stats incorporates by reference its responses to each preceding Paragraph as if fully set forth herein.

165. Since at least 2008, Agri Stats and its pork processor co-conspirators have agreed with each other to exchange competitively sensitive information regarding prices, output, and costs. These agreements have unreasonably restrained trade, suppressed competition, and had the actual and likely effect of stabilizing and increasing prices and reducing output in the United States pork market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 165 of the Second Amended Complaint.

**C. Count 3: Sherman Act Section 1 – Anticompetitive Information Exchange Harming Turkey Market**

166. Plaintiffs repeat and reallege each and every paragraph of this Complaint as if fully set forth herein.

**ANSWER:** Paragraph 166 of the Second Amended Complaint does not contain any factual allegations to which a response is required. To the extent a response is required, Agri Stats incorporates by reference its responses to each preceding Paragraph as if fully set forth herein.

167. Since at least 2008, Agri Stats and its turkey processor co-conspirators have agreed with each other to exchange competitively sensitive information regarding prices, output, and costs. These agreements have unreasonably restrained trade, suppressed competition, and had the actual and likely effect of stabilizing and increasing prices and reducing output in the United States turkey market, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 167 of the Second Amended Complaint.

#### **X. REQUESTED RELIEF**

168. Agri Stats' business model centers on the recruitment of competitors in various agricultural protein industries to participate in anticompetitive information exchanges. This conduct has stabilized and increased prices and reduced output for staple meat items.

**ANSWER:** Agri Stats denies the allegations contained in Paragraph 168 of the Second Amended Complaint.

169. Accordingly, Plaintiffs request that this Court:

a. rule that Agri Stats' and its broiler co-conspirators' anticompetitive information exchange has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. rule that Agri Stats' and its pork co-conspirators' anticompetitive information exchange has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

c. rule that Agri Stats' and its turkey co-conspirators' anticompetitive information exchange has unreasonably restrained trade and is unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1;

d. permanently enjoin Agri Stats and EMI from facilitating the exchange of sensitive information;

e. permanently enjoin Agri Stats and EMI from continuing to engage in the anticompetitive practices described herein and from engaging in any other practices with the same purpose and effect as the challenged practices;

f. grant other relief as required by the nature of this case and as is just and proper to prevent the recurrence of the alleged violations and to dissipate their anticompetitive effects; and

g. award each Plaintiff, as applicable, an amount equal to its costs, including reasonable attorneys' fees, incurred in bringing this action; and award such other relief to each Plaintiff as the Court may deem just and proper.

**ANSWER:** In response to Plaintiffs' request for relief as set forth in Plaintiffs' Second Amended Complaint, Agri Stats denies that Plaintiffs are entitled to any relief on any of their claims, and request that Plaintiffs take nothing from Agri Stats by this litigation.

**ADDITIONAL ALLEGATIONS AND GENERAL DENIAL**

Agri Stats denies all allegations in the Second Amended Complaint unless Agri Stats has expressly admitted those allegations herein. Where an allegation in the Second Amended Complaint is directed at a party that is not affiliated with Agri Stats, then except as otherwise expressly stated, Agri Stats denies the allegations set forth in the Second Amended Complaint on the basis that it lacks the knowledge or information sufficient to form a belief concerning the truth of such allegations. Further, unless otherwise expressly admitted, Agri Stats denies any allegations in the headings, footnotes or in other places in the Second Amended Complaint, to the extent that any such allegations require a response. Any headings, subheadings or similar text that Agri Stats has included in this Answer are for the convenience of the Court and the parties, and are not intended to be nor shall they be construed as an admission of any fact by Agri Stats.

**AFFIRMATIVE DEFENSES**

Agri Stats asserts the following defenses in response to Plaintiffs' claims, assuming the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are described herein. Agri Stats also reserves all affirmative defenses under Federal Rule of Civil Procedure 8(c) and any other defenses at law or equity that may exist now or in the future. Agri Stats reserves the right to amend this Answer and assert other defenses as this action proceeds.

### **FIRST DEFENSE**

1. The Plaintiff States' claims are barred, in whole or in part, because The Plaintiff States have not suffered any injury cognizable under the antitrust laws.

2. For example, the Plaintiff States' alleged harm lies in its speculation that a conspiracy among many companies colluded seamlessly over a decade resulting in its harm. In essence, Plaintiffs complain about the impact of naturally unpredictable changes in the market conditions that exist in a global economy. In particular, Plaintiffs have suffered no injury arising from any conduct alleged as to Agri Stats.

3. To the extent that Plaintiffs maintain that they were injured by these events, such an injury is not cognizable under the antitrust laws.

### **SECOND DEFENSE**

4. Plaintiffs' claims are barred, in whole or in part, because any alleged injuries and damages were not legally or proximately caused by any acts or omissions of Agri Stats or were caused, if at all, solely and proximately by the conduct of third parties including, without limitation, the prior, intervening or superseding conduct of third parties. Agri Stats cannot be held liable for loss or damage caused by third parties.

### **THIRD DEFENSE**

5. Plaintiffs' claims are barred, in whole or in part, because the conduct of Agri Stats was procompetitive, reasonable, and permissible, and was based upon independent, legitimate, and self-interested business and economic justifications.

### **FOURTH DEFENSE**

6. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek to impose liability on Agri Stats based on the exercise of any person or entity's right to petition

federal, state and local legislative bodies, because such conduct was immune under the *Noerr-Pennington* doctrine and/or privileged under the First Amendment to the U.S. Constitution. Protected activities include, without limitation, participation in trade associations seeking legislative and/or administrative remedies related to issues facing protein producers.

#### **FIFTH DEFENSE**

7. Plaintiffs are not entitled to injunctive or other equitable relief because, to the extent it could prove its claims (which Agri Stats disputes), any injunctive relief would be improper because, *inter alia*, the alleged unlawful conduct regarding Agri Stats' pork and turkey benchmarking services ceased years before Plaintiffs filed suit.

#### **SIXTH DEFENSE**

8. Plaintiffs' claims are barred, in whole or in part, because Agri Stats' conduct and actions were authorized or permitted under state and/or federal law.

#### **SEVENTH DEFENSE**

9. Agri Stats reserves the right to assert other defenses as this action proceeds up to and including the time of trial.

#### **EIGHTH DEFENSE**

10. Plaintiffs' claims seek to prohibit Agri Stats from publishing truthful, non-deceptive, and legitimate commercial information and therefore are barred by the First Amendment to the United States Constitution.

#### **NINTH DEFENSE**

11. Plaintiffs' claims seek to destroy Agri Stats' legitimate business and therefore are barred by the Fifth Amendment to the United States Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Agri Stats respectfully requests that judgment be entered in favor of Agri Stats and against Plaintiffs, dismissing the Complaint in its entirety with prejudice. Agri Stats further requests that this Court (i) award Agri Stats its costs and disbursements, and (ii) award such other and further relief as the Court deems just and proper.

**XI. JURY TRIAL DEMANDED**

Pursuant to the Federal Rules of Civil Procedure 38, Agri Stats demands a trial by jury on all claims and defenses upon which it is entitled to a jury trial.

Dated: June 11, 2024

Respectfully submitted,

/s/ Justin W. Bernick

Peter H. Walsh (MN# 0388672)

HOGAN LOVELLS US LLP

80 South 8th Street Ste 1225

Minneapolis, MN 55402

Tel: (612) 402-3017

Fax: (612) 339-5167

Email: peter.walsh@hoganlovells.com

William L. Monts III (admitted *pro hac vice* )

Justin W. Bernick (admitted *pro hac vice*)

HOGAN LOVELLS US LLP

555 Thirteenth Street, N.W.

Washington, D.C. 20004

Tel: (202) 637-5600

Fax: (202) 637-5910

william.monts@hoganlovells.com

justin.bernick@hoganlovells.com

*Counsel for Defendant Agri Stats, Inc*